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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

DANETTE M. MOORE, LATRESA MYERS,
 ALANNA HARRISON and ALISA VALDEZ
 individually and on behalf of others similarly
 situated,

Plaintiffs,

v.

PETSMART, INC, and Does 1 through 100,
 inclusive,

Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF GRAHAM S.P. HOLLIS
 IN SUPPORT OF; 1) PLAINTIFFS’
 UNOPPOSED MOTION FOR FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT; AND IN SUPPORT OF 2)
 PLAINTIFFS’ MOTION FOR AN AWARD OF
 ATTORNEY’S FEES AND COSTS AND CLASS
 REPRESENTATIVE SERVICE AWARDS**

Date: March 12, 2015
 Time: 9:00 a.m.
 Courtroom: 4 –5th Floor
 Judge: Hon. Edward J. Davila

I, Graham S.P. Hollis, state and declare:

1. I am an attorney at law licensed to practice before all courts of the State of California. I am a shareholder with the law firm of GrahamHollis, A.P.C. (“GrahamHollis”) in San Diego, California. My associate Marta Manus and I are the attorneys handling this case and supervising the proceedings. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would competently testify thereto.

2. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and in support of Plaintiffs’ Motion for an Award of Attorney’s Fees and

Costs and Class Representative Service Awards. This declaration supplements my previous declarations filed in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Jan. 31 Hollis Decl.") and declaration in support of Plaintiffs' Supplemental Brief in support of Plaintiffs' Motion for Preliminary Approval which are attached hereto as Exhibit A and Exhibit B for ease of reference.

3. A true and correct copy of the fully executed Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement") is attached herein as Exhibit C.

CLASS COUNSEL IS QUALIFIED TO REPRESENT THE CLASS

4. As outlined in my Declaration in Support of Preliminary Approval and my Declaration in support of Fees, I along with Marta Manus of my firm are experienced not only in class actions and employment litigation, but specifically in prosecuting wage and hour class actions such as this case. See Exhibit A ¶¶ 3 - 8. Since filing my Declaration in Support of Preliminary Approval, GrahamHollis, APC has been appointed as Class Counsel in the following cases: Solaberrieta v. Baker Hughes Oilfield Operations, Inc., et al., Superior Court for the County of Los Angeles; Delatorre v. Johnson Controls, Inc., United States District Court for the Northern District of California; Ledbetter v. Entrepreneurial Ventures, Inc., Superior Court for the County of Santa Clara; Rodriguez v. Old Dominion Freight Line, Inc., United States District Court for the Central District of California; Madera v. Universal Alloy Corporation, United States District for the Central District of California; Frayre v. United Parcel Services Supply Chain Services, Inc., Superior Court for the County of San Diego; De La Rosa v. Quten Research Institute, LLC, Superior Court for the County of San Diego; and Loveless v. ASM Affiliates, Superior Court for the County of San Diego.

THE COURT GRANTED PRELIMINARY APPROVAL OF THE SETTLEMENT

5. On May 14, 2014, this Court granted preliminary approval of the class action settlement ("Court's Preliminary Approval Order") (Doc.74). The Court preliminarily certified the settlement class for settlement purposes pursuant to subsections (a) and (b)(3) of Federal Rule of Civil Procedure 23, approved all of the terms of the Settlement Agreement, approved the form and manner of the notice to the Settlement Class, ordered that notice be given to the class members by mailing them specific forms of the Class Notice, Claim Form/FLSA Consent Form ("Notice Packet"), and appointed Simpluris as the

1 Settlement Administrator. Further, the Court appointed myself and Marta Manus of my firm
 2 GrahamHollis, APC as Class Counsel and approved, on a preliminary basis, the payment of incentive
 3 awards to each of the named Plaintiffs, an award of attorney's fees of \$3,333,333 (33.33% of the Total
 4 Settlement Amount of \$10,000,000), the payment of administration expenses incurred by the Settlement
 5 Administrator, and the payment of PAGA penalties of \$50,000, seventy-five (75%) of which, or \$37,500
 6 will be paid to the LWDA and twenty-five (25%) of which, or \$12,500 will be distributed to the
 7 participating Settlement Class.

8 6. On June 6, 2014, the parties filed a Joint Stipulation to Continue Hearing on Plaintiffs'
 9 Motion for Final Approval and Related Dates (Doc. 75), which this Court granted on June 24, 2014
 10 (Doc. 76).

11 7. On November 14, 2014, the Court granted the parties' Joint Stipulation Regarding
 12 Modification of Settlement Stipulation ("Court's Joint Stipulation 11/14/14 Order") (Doc. 86), which
 13 modified certain terms set forth in the Settlement Agreement. Pursuant to the Court's Joint Stipulation
 14 11/14/14 Order and the Court's Preliminary Approval Order, myself and Marta Manus of GrahamHollis
 15 APC are appointed as Lead Class Counsel and Capstone Law APC is appointed as Pet Stylist Settlement
 16 Class Counsel. Further, Lead Class Counsel shall apply for an award of fees of up to 28.83% of the
 17 Total Settlement Amount (or \$2,883,000), and costs incurred by Lead Class Counsel. Pet Stylist
 18 Settlement Class Counsel Capstone Law APC shall apply for an award of fees of up to 4.5% of the Total
 19 Settlement Amount (or \$450,000), and costs incurred by Pet Stylist Settlement Class Counsel.
 20 (Settlement Agreement § IV (4.9) (Doc. 83), Ex. B hereto).

21 **THE SETTLEMENT TERMS**

22 The following summarizes the material elements of the Settlement:

23 8. The Parties have settled the claims against PetSmart on behalf of the Settlement Class
 24 defined as follows:

25 All individuals who are or were employed by PetSmart as a Pet Stylist, Groomer, Grooming
 26 Trainee, and/or Salon Manager in California at any time during the period from May 23, 2008 to
 May 14, 2014 ("Pet Stylist Settlement Class");

27 All individuals who are or were employed by PetSmart as an hourly paid, non-exempt employee
 28 in California at any time during the period May 23, 2008 to May 14, 2014 in a position other

than Pet Stylist, Groomer, Grooming Trainee, or Salon Manager (“Non-Exempt Employee Settlement Class”);

The Settlement Class includes a Waiting Time Penalties Settlement Sub-Class defined as: All individuals who are members of the Non-Exempt Employee Settlement Class or the Pet Stylist Settlement Class who separated from their employment with PetSmart at any time between May 23, 2009 and May 14, 2014 (“Waiting Time Penalties Settlement Sub-Class”).

a. PetSmart is to pay \$10,000,000.00 (the “Total Settlement Amount”). The Total Settlement Amount is the amount that Defendant shall be required to pay under the terms of the Settlement Agreement, and shall be deemed in satisfaction of all claims arising out of, this action, including claims for: (1) all wages, penalties, interest, and/or other amounts to be paid to Settlement Class Members; (2) the payment to the Labor and Workforce Development Agency (“LDWA”); (3) attorney’s fees and costs to Class Counsel; (4) the service payments to the Class Representatives; (5) all costs of administration, including, settlement administration fees; and (6) the employee’s share of payroll taxes. The Total Settlement Amount also includes the Reserve Fund of \$100,000. Once these deductions are made, the balance of the Total Settlement Amount will be available for distribution to Settlement Class Members (“Net Distribution Amount”).

b. Settlement Class Members who submit a timely Claim Form (“Claimants”) will receive a portion of the Net Distribution Amount in an amount based upon the relative total gross compensation paid to each Settlement Class Member by PetSmart between May 23, 2008 and May 14, 2014 (“Covered Timeframe”).

c. To the extent any Settlement Class Member, who does not file a request for exclusion, fails to submit a Claim Form, the Individual Settlement Amount attributable to that Settlement Class Member shall be distributed to Claimants within that Settlement Class Member’s Settlement Class (“Pet Stylist Settlement Class” or “Non-Exempt Employee Settlement Class”) in proportion to their Individual Settlement Amounts.

d. “Class Counsel” shall mean Lead Class Counsel shall mean Graham S.P. Hollis and Marta Manus of GrahamHollis APC and “Pet Stylist Settlement Class Counsel”, Capstone Law APC.

e. Lead Class Counsel (GrahamHollis APC) shall apply for an award of fees up to

1 28.83% of the Total Settlement Amount (or \$2,883,000), and costs incurred by Lead Class Counsel. Pet
 2 Stylists Settlement Class counsel (Capstone Law APC) shall apply for an award of fees of up to 4.5% of
 3 the Total Settlement Amount (or \$450,000) and costs incurred by Pet Stylist Settlement Class Counsel.
 4 Class Counsel agrees not to oppose the attorney's fee awards requested by each other. Said fees shall be
 5 in addition to the payment of all costs actually incurred by Class Counsel in connection with this matter.

6 f. The Class Representatives for the Settlement Classes are the named Plaintiffs
 7 Danette Moore, Latresa Myers, Alanna Harrison, and Alisa Valdez, and Plaintiff Jeanette Negrete.
 8 Jeanette Negrete shall be deemed to represent only the Pet Stylist Settlement Class, as defined above and
 9 in Section 1.15 of the Settlement Agreement.

10 g. Plaintiffs will request, and PetSmart will not object to, service awards to each of
 11 the named Plaintiffs/Class Representatives. Plaintiffs will request a service award payment of \$10,000
 12 each to Plaintiff Harrison and Plaintiff Valdez and a service award payment of \$5,000 each to Plaintiff
 13 Moore, Plaintiff Myers and Plaintiff Negrete. This Amount will come from the Total Settlement Amount
 14 and will be in addition to the Individual Settlement Amount for each Class Representative.

15 h. Pursuant to the terms of the Settlement Agreement, any unclaimed funds will be
 16 redistributed to settlement class members who submit a valid and timely claim form ("Claimants") in
 17 proportion to each Claimant's Individual Settlement Amount. Notwithstanding the pro-rata increase, no
 18 Claimant shall be entitled to recover more than three times his or her original Individual Settlement
 19 Amount.

20 i. Any unclaimed funds shall be first used to pay PetSmart's share of any employer
 21 side payroll taxes owed. Any Net Distribution Amount remaining after the payment of employer taxes
 22 shall be paid to a *cy pres* beneficiary designated jointly by the parties as the Legal Aid Society –
 23 Employment Law Center, 180 Montgomery Street, Suite 600, San Francisco, CA 94104. The Legal Aid
 24 Society – Employment Law Center provides civil legal services to the indigent and pro bono
 25 employment law advice to low-income communities.

26 9. The proposed Settlement satisfies all criteria for final approval under federal law because
 27 it is fair, reasonable, adequate, and free from collusion.
 28

BACKGROUND AND PROCEDURAL HISTORY

10. On May 23, 2012, Plaintiffs brought this action in the Superior Court, County of Alameda on behalf of themselves and certain non-exempt California employees of PetSmart. The case was timely removed to this Court by Defendant on July 9, 2012. Plaintiffs' allege that PetSmart violated the California Labor Code, the relevant Wage Order of the California Industrial Welfare Commission, and the California Unfair Competition Law (*California Bus. & Prof. Code* § 17200, *et seq.* with PetSmart's alleged policy of: (1) failing to pay minimum and overtime wages for all hours worked including time spent performing non-productive duties and working off-the-clock; (2) failing to reimburse for reasonably incurred work-related expenses (including grooming tools and equipment); (3) failing to compensate for meal and rest period violations; (4) failing to properly calculate vacation pay; (5) failing to timely and properly pay wages due upon termination of employment; (6) failing to provide suitable seats; and (7) engaging in unlawful/unfair business practices.

11. On April 9, 2013, the parties engaged in mediation with mediator Jeffrey Ross. Although the parties were unable to reach a settlement agreement on the day of the mediation, the parties continued their settlement negotiations through mediator Jeffrey Ross and ultimately, on in June 2013, accepted the mediator's proposal, reaching the settlement on the terms for which they now seek final approval. The parties devoted substantial time and effort to reaching a proposed settlement. At all times, the negotiations were conducted at arms' length and through the mediator. The fee discussions were handled separately and after the discussion of substantive relief that PetSmart agreed to pay to the settlement class. The mediator proposed a 33 1/3% amount for attorney's fees after mediating the case extensively. The mediator also made a mediator's proposal that because the fees were negotiated separately that in the event that less than the full amount of fees be awarded that the un-awarded portion revert back to the defendant. At all times, the negotiations were conducted at arms' length and through the mediator.

12. On March 7, 2014, the parties attended the hearing on Plaintiffs' Motion for Preliminary Approval, at which time this Court requested that the parties submit supplemental briefing clarifying specific provisions of Settlement. Specifically, the Court asked the parties to provide supplemental briefing addressing the following: (1) the provision in the Settlement Agreement that any amount not

1 awarded by the Court to class counsel for attorney's fees will be retained by Defendant and will not
 2 increase the amount available for distribution to the settlement class members; (2) a lodestar cross-check
 3 of class counsel's requested attorney's fees; (4) the sampling methodology utilized for the valuation of
 4 the Plaintiffs' claims and allocation of settlement funds among the settlement classes; and (5) the
 5 reasonableness of the amount of the incentive awards requested by each of the four Plaintiffs. On March
 6 28, 2014, the parties filed their supplemental briefs in support of Plaintiffs' Motion for Preliminary
 7 Approval. A review of the record regarding negotiations with PetSmart clearly shows that the
 8 negotiation process and ultimate settlement are free from collusion as the negotiations were conducted at
 9 arms-length through a well-respected neutral mediator, supporting a finding of non-collusion and the fee
 10 discussions were handled separately and after the discussion of substantive relief that PetSmart agreed to
 11 pay to the settlement class.

12 13. Since the Court granted preliminary approval of the settlement on May 14, 2014, the
 13 parties have been working cooperatively and diligently to ensure that the settlement claims procedures
 14 were accurately implemented by Simpluris. Due to the amount and complexity of the class data as well
 15 as the format in which the class data was maintained by Defendant, Simpluris required additional time to
 16 complete the mailing of the Class Notice and Claim Forms. On June 20, 2014, the parties filed a Joint
 17 Stipulation to Continue Hearing on Plaintiffs' Motion for Final Approval and Related Dates Pursuant to
 18 This Court's Order Granting Preliminary Approval of Class Action Settlement, which this Court granted
 19 on June 24, 2014. (Doc. 74). On November 7, 2014, the parties filed a Joint Stipulation Regarding
 20 Modification of Settlement Stipulation clarifying specific terms of the Settlement Agreement, which this
 21 Court granted on November 14, 2014. (Doc. 86).

22 14. On February 13, 2014, Jeanette Negrete (a Plaintiff in the related action pending in the
 23 U.S.D.C. Northern District, *Negrete v. PetSmart, Inc.*, Case No. 5:13-cv-04300-EJD) filed an *ex parte*
 24 motion to intervene (Doc. 42) in the instant lawsuit, which was denied by Court Order dated February
 25 26, 2014 (Doc. 55). Negrete appealed that denial on March 26, 2014 (Doc. 64). The parties have worked
 26 cooperatively and extensively to address Negrete's concerns raised in the intervention motion. In part,
 27 the modified Settlement Agreement added Jeanette Negrete's counsel of record, Capstone Law APC as
 28 additional Class Counsel, as "Pet Stylists Settlement Class Counsel", and added Jeanette Negrete as an

1 additional class representative. On February 4, 2015, Negrete filed a motion to voluntarily dismiss her
2 appeal, which was granted on February 6, 2015.

3 15. As part of the modified Settlement Agreement, I agreed that my firm, as Lead Class
4 Counsel, would apply for an award of fees of up to 28.83% of the Total Settlement Amount (or
5 \$2,883,000), and costs incurred by my firm, and that Pet Stylist Settlement Class Counsel Capstone Law
6 APC would apply for an award of fees of up to 4.5% of the Total Settlement Amount (or \$450,000), and
7 costs incurred by Pet Stylist Settlement Class Counsel. Additionally, as part of the modified Settlement
8 Agreement, Plaintiff Jeanette Negrete shall serve as one of the Class Representatives for the Pet Stylist
9 Settlement Class and shall request a service award payment in the amount of \$5,000. The Court
10 approved the modified Settlement Agreement (Ex. B hereto) in its November 14, 2014 Order (Doc. 86).

11 **DISCOVERY AND INVESTIGATION**

12 16. In preparation for the mediation, my office prepared a comprehensive damage analysis
13 based on information gathered from class member interviews and employment data provided by
14 PetSmart. The putative class members worked at 132 PetSmart locations throughout California. The
15 parties engaged in extensive negotiations to arrive at a method to examine the wage and hour policies
16 and practices at a representative sample of the Petsmart locations. The parties agreed that 10% of the
17 locations (selected randomly utilizing an Excel Randomizer program) would provide an adequate
18 sample. PetSmart produced employment data and documents for non-exempt employees from 14 stores
19 of its 132 California stores. PetSmart produced in excess of 33,000 pages of documents as well as
20 electronic personnel and payroll data regarding PetSmart's employees. My office spent numerous hours
21 analyzing this information and data. Additionally, PetSmart provided my office with the names and
22 contact information of all current and former non-exempt employees employed at the 14 sample stores.
23 Lead Counsel interviewed current and former employees from the following California PetSmart
24 locations: Fremont, Irvine, Merced, Milpitas, Santa Maria, Sacramento, Mountain View, Lancaster, La
25 Jolla, Palmdale, Pelandale, Rohnert Park, Santa Cruz, San Jose, San Leandro, Santa Maria, Shingle
26 Springs, Tustin, and Oceanside. Some of the class members interviewed by Plaintiffs' counsel worked at
27 multiple PetSmart locations throughout California. The information exchanged and investigation
28 undertaken allowed Class Counsel to assess the strengths and weaknesses of the claims and the benefits

1 of the settlement under the circumstances of this case.

2 17. In March 2013, Defendant took the deposition of each of the four named Plaintiffs in this
3 case. The parties each propounded one set of special interrogatories and requests for production of
4 documents but agreed to hold off on serving their responses until after the completion of mediation in
5 order to preserve the parties' resources and time and focus their efforts on resolving the case at
6 mediation.

7 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

8 18. Based on my overall experience in this type of litigation, I believe that the settlement
9 achieved is fair, reasonable and adequate and represents a great result for the Settlement Class Members.
10 As detailed in my Declaration in Support of Preliminary Approval, Ex. A hereto.

11 19. PetSmart has committed to paying the Net Distribution Amount of \$6,322,500, none of
12 which will revert to PetSmart because any unclaimed funds will be redistributed to the participating
13 settlement class members, not to exceed three times their original claim amount, with the remaining
14 unclaimed funds distributed to the cy pres beneficiary mutually designated by the parties.

15 20. Plaintiffs' claim for unpaid minimum wages for non-productive time, comprising the
16 majority of the value of the claims in this case, is a very challenging claim to prove given the fact that
17 PetSmart does not require groomers to record the start and end times of each grooming job, making it
18 very difficult to estimate the average amount of time spent on non-grooming tasks (i.e. non-productive
19 time).

20 21. The proposed settlement is both fair and reasonable in light of Defendant's available
21 legal and factual grounds for defending against the asserted vacation claims. The significant benefits
22 provided to the Settlement Class through the settlement and the resolution is extremely fair and adequate
23 and well within the range of reasonableness in comparison to similar wage and hour cases against
24 Defendant PetSmart, Inc.

25 22. In December 2008, the United States District Court for the Eastern District granted final
26 approval in *Sorenson, et al v. PetSmart, Inc.* (E.D. Cal. Case No.: 2:06-cv-02674-JAM-DAD)
27 ("Sorenson lawsuit"). The Sorenson lawsuit alleged wage and hour violations involving the same Labor
28 Code provisions as in the instant case, including violations of California Labor Code section 226.7 for

1 failure to provide meal and rest breaks and derivative claims for Labor Code sections 203, and 226. The
2 Sorenson lawsuit settled for a reversionary maximum settlement amount of \$1,950,000 on behalf of two
3 sub-classes, Groomers and Non-Groomers, with a total of 21,813 class members. The settlement was
4 allocated between the two sub-classes, with 62% of the net settlement sum allocated to the Groomer
5 Class and 38% allocated to the Non-Groomer Class based on the respective valuation of the claims of
6 the sub-classes. The Court approved the settlement, awarding class counsel \$585,000 (30% of maximum
7 settlement amount), and an incentive award to the named Plaintiff of \$15,000. Because the amount of
8 any unclaimed funds reverted to PetSmart and the settlement had a minimum distribution of 60% of the
9 net settlement fund, the total payout to the two sub-classes was \$747,000, with \$463,140 distributed to
10 the Groomer sub-class, and \$283,860 distributed to the Non-Groomer sub-class, with a total of 4,442
11 claims paid.

12 23. In April 2009, the United States District Court for the Eastern District granted final
13 approval of another settlement reached by *PetSmart in Enabnit, et al. v. PetSmart, Inc.* (E.D. Cal. Case
14 No.: 2:07-cv-00165-JAM-DAD) (“Enabnit lawsuit”). The Enabnit lawsuit alleged various wage and
15 hour violations on behalf of three sub-classes including “commissioned salon employees” (i.e.
16 groomers) for various Labor Code violations including a claim for failure to pay minimum wages and
17 failure to provide reimbursement for grooming tools to commissioned salon employees. The Enabnit
18 lawsuit also settled for a reversionary maximum settlement amount of \$1,950,000 on behalf of three
19 sub-classes, “employees without direct deposit” (sub-class A), “commissioned salon employees” (sub-
20 class B), and “salon employees” (sub-class C), with total of 20,455 class members. Because the amount
21 of any unclaimed funds reverted to PetSmart, the total payout to the three sub-classes was \$369,665,
22 with a total of 1,790 claims paid. The Court approved the settlement, awarding class counsel \$570,000
23 (29.23% of the max settlement amount), and an incentive award to the named Plaintiff of \$30,000. The
24 Enabnit lawsuit alleged a minimum wage claim and a tool claim on behalf of sub-class B, the
25 commissioned salon employees, nearly identical to the Moore allegations. The result of the Enabnit
26 lawsuit was that PetSmart’s groomer employees released their minimum wage claim through December
27 1, 2008. Because there were overlapping classes in Sorenson and Enabnit, the Enabnit settlement
28 agreement specifically excluded claims that were being litigated in the first-filed Sorenson action.

24. Although the Sorenson settlement released Labor Code § 203 claims for waiting time penalties, it did not award the former employees, the only employees entitled to a waiting time penalty, any additional monetary recovery. In contrast, the settlement in this case specifically includes a Waiting Times Penalties Settlement Sub-Class, the members of which will receive an additional monetary recovery of either \$200 or \$400 depending on whether they are a part of the Pet Stylist Settlement Class or Non-Exempt Employee Settlement Class, in addition to the monetary recovery they receive for their claim. On an individual basis, members of the Pet Stylist Settlement Class who are also members of the Waiting Time Penalties Settlement Sub-Class will receive a greater amount (\$400 per individual) as a waiting time penalty because, according to the PetSmart's employment records, individuals in the Pet Stylists Settlement Class earned significantly more on average in gross compensation than members of the Non-Exempt Employee Settlement Class.

25. Both the Sorenson and Enabnit settlements were distributed on a workweek basis, whereas the Moore settlement will be distributed based on class members' W-2 income. The parties agreed that it is more equitable to use gross compensation earned instead of the number of workweeks worked to calculate Individual Settlement Amounts. A detailed analysis of PetSmart's payroll records revealed that there was a wide range of hourly rates earned by the Petsmart employees, particularly among groomers. Additionally, many employees worked part-time. Based on our investigation, we determined that those employees who worked more hours were more likely to suffer more unpaid time. Also the higher the hourly rate for an employee that suffers unpaid time, the greater will be the amount of money owed to the particular employee. If the class members were paid from the settlement based on workweeks this might result in an inequitable distribution of the settlement. Employees who worked fewer hours per week or were paid less might be paid the same amount per work weeks there coworkers who had more unpaid time or lost more because their hourly rate was higher. By paying the class members according to their relative W-2 income during the class period the allocation is much more likely to be fair.

26. At the time this case was brought, the result was far from certain. PetSmart's compensation scheme at issue here had been in place for years. Plaintiffs' theory for unpaid wages for commissioned Pet Stylist employees for non-productive time and time spent taking rest breaks was a

1 novel and very risky claim at the time of the mediation. This theory had not yet been tested and there
2 was very little supporting case law. Plaintiffs' theory was presented long before the holding in *Gonzalez*
3 *v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013) (holding that failing to pay employees for
4 time spent performing tasks other than tasks paid on a piece-rate basis was unlawful) and before *Bluford*
5 *v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013) (holding that employer's liability for failing to
6 provide paid rest periods to drivers paid on mileage basis was a common issue which predominated over
7 individual issues). Additionally, Plaintiffs' novel claim for unpaid minimum wages for non-productive
8 time, comprising the majority of the value of the claims in this case, is a very challenging claim to prove
9 given the fact that PetSmart does not require groomers to record the start and end times of each
10 grooming job, making it very difficult to calculate the amount of time spent on non-grooming tasks (i.e.
11 non-productive time). Furthermore, there was a serious risk as to whether Plaintiffs would be able to
12 obtain class certification and thereby recover on behalf of all employees in the class. If the Court were
13 to refuse certification, the unrepresented potential plaintiffs would likely lose their chance at recovery
14 entirely. Even if the Court were to certify the class, there is no guarantee that the certification would
15 survive through trial, as Defendant may seek decertification or modification of the classes.
16 Additionally, the amount Plaintiffs might recover if they prevailed at trial is uncertain. The Settlement
17 reached here was possible only because we were able to convince Defendant that Plaintiffs could prevail
18 on the difficult and novel legal issues regarding unpaid wages non-productive time, achieve class
19 certification, overcome difficulties in proof as to monetary relief and take the case to trial if need be.

20 27. The settlement also provides additional value in the form of forward-looking relief
21 because, as a direct result of this settlement, PetSmart has revised its compensation policy for
22 commissioned Pet Stylist employees and as of January 2014, PetSmart pays these employees a
23 commission and an hourly rate as opposed to a commission or an hourly rate. Additionally, PetSmart has
24 agreed to provide grooming tools for its in-store salons to be used by Pet Stylists. As part of this
25 Settlement, PetSmart retained a safety and ergonomic consultant to conduct an ergonomic evaluation of
26 PetSmart's practices and to review PetSmart's policies and procedures with regard to whether Pet
27 Stylists are allowed to sit while performing grooming tasks. (Settlement Agreement § IV (4.11(a) – (d).))

28 28. The settlement also provides that any unclaimed funds shall be first used to pay

PetSmart's share of any employer side payroll taxes owed. Any Net Distribution Amount remaining after the payment of employer taxes shall be paid to the Legal Aid Society – Employment Law Center ("ECL") as the cy pres beneficiary. (Settlement Agreement Section IV, ¶ 4.5(c)). The ECL is a well-respected non-profit organization that provides civil legal services to the indigent and pro bono employment law advice to low-income communities.

29. While the parties have disagreed over the scope of PetSmart's exposure to the alleged claims as well as the merits of the claims themselves, counsel for both parties agree that the settlement reach is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay and defenses asserted by PetSmart.

THE NOTICE PROCEDURE WAS PROPERLY CARRIED OUT AND ITS RESULTS INDICATE STRONG SUPPORT FOR, AND NO OPPOSITION TO THE SETTLEMENT

30. Simpluris, the Settlement Administrator approved by the Court, fully and faithfully carried out the Court's Preliminary Approval Order and the Court's 11/14/14 Order granting the parties' Joint Stipulation Regarding Modification of Settlement Stipulation by mailing the Notice Packet to the 19,701 class members. Simpluris has worked diligently with Class Counsel and counsel for Defendant to efficiently administer the settlement process. This process, however, has not been without its challenges due to the size of the class, the format in which the data for each class member was maintained, and the transient nature of employees in this field. In order to ensure that we were able to deliver the class notice to every class member. Simpluris has been sending weekly status reports to my firm, counsel for Jeanette Negrete and counsel for Defendant, so each would be advised of the progress of the settlement administration.

31. Prior to mailing the Notice and Claim Forms, Simpluris performed an in-depth Accurant skip trace on all class members, who according to the records of PetSmart are former employees, which included approximately 11,119 former employees. Simpluris was able to locate 6,517 new addresses which were updated prior to the mailing of the Notice Packets. The 6,517 new addresses generated by the Accurant skip trace were obtained subsequent to fist utilizing the National Change of Address Database maintained by the U.S. Postal Service. I believe that the significant response rate is due in

1 large part to these extraordinary efforts made to locate the most up to date addresses for the class
2 members, particularly the former employees of Petsmart, many of whom had moved one or more times
3 subsequent to separating from their employment with Petsmart. Pursuant to the settlement stipulation
4 Simpluris also established and maintained a website with the URL www.petsmartsettlement.com that
5 class members could use to file a Claim Form, track the processing of the Claim Form, and contact the
6 Settlement Administrator if they had questions. A significant number, approximately 16.26% of
7 Settlement Class Members, utilized the website to submit a Claim Form.

8 32. On December 19, 2014, Simpluris mailed a reminder postcard to 14,858 current and
9 former Settlement Class Members who had not responded to the initial mailing, reminding these
10 Settlement Class Members of their deadline to respond and participate in the Settlement.

11 33. On January 9, 2015, Simpluris mailed a reminder postcard to 2,662 current Settlement
12 Class Members who had not responded, reminding them of their deadline to respond and participate in
13 the Settlement and advising current employees that they would not suffer any retaliation for agreeing to
14 participate in the settlement.

15 34. The results of the notice procedures are sufficient to support final approval. Of the 19,701
16 Notices mailed, just 941 were returned as undeliverable as of the date of the filing of this Motion. As of
17 the date of the filing of this Declaration, 9,799 valid and timely Claim Forms were received by
18 Simpluris. Monetarily, this represents a monetary value to the Claimants of \$4,358,026.83 (68.93%) of
19 the Net Distribution Amount. Given the size of the class, this is a significant return rate that strongly
20 supports the fairness, reasonableness, and adequacy of the settlement. Notably, only 6 individuals filed a
21 request for exclusion and no objections to the Settlement have been filed since the mailing of the Notice.
22 After the redistribution of the unclaimed funds, all of the \$6,322,500 of the Net Distribution Amount
23 will be paid to the Claimants.

24 35. After the unclaimed funds are redistributed the Settlement Administrator calculates that
25 each participating class member will be entitled to recover an average Individual Settlement Amount of
26 approximately \$645.02. The largest Individual Settlement Amount is estimated to be \$15,705.64.

27 36. It is my opinion that the results of the notice procedures strongly favor final approval of
28 the Settlement.

THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE

37. My firm's representation of Plaintiff and the Class Members was entirely contingent on winning their wage and hour claims and collecting an award of attorney's fees. Plaintiffs were not able and were not responsible for paying our fees, and my firm would only collect attorney's fees if we were successful on prosecuting their claims on their behalf.

38. Although I believe the appropriate method of calculating the fees award is the percentage-of-the-fund method, a lodestar cross-check confirms the reasonableness of my firm's requested fees. My firm's requested fee award of \$2,883,000 is equal to 28.83% of the Total Settlement Amount.

39. I headed a team of lawyers and paralegals at my firm in pursuit of this Settlement. All of the work performed by my office has been under my direct supervision. The primary associate on this case has been Marta Manus who has been a member of the State Bar since 2008 and has extensive wage and hour class action experience. The primary paralegal on this case has been our senior paralegal Jeremy B. Freedman, who earned his paralegal certificate in 2010 from the University of San Diego and is also Practical Training of Law Student (PTLS) certified by the State of California Bar.

40. To date, my firm's lodestar is \$1,541,353.50 and the lawyers and paralegals in my firm have spent 3,367 hours litigating this case. All of the time is recorded contemporaneously and billed in increments of tenths of an hour. I have supervised the work on the case. I have practiced law in California since 1985 and my practice is almost exclusively devoted to handling wage and hour class action litigation. My hourly rate is \$720 which I believe is reasonable given my experience and the nature of the work involved. The primary handling associate assigned to the file is Marta Manus who has practiced law in California since 2008. Her hourly rate is \$480. Several experienced paralegals have performed the majority of the paralegal work on the case and their hourly rate is \$225 - \$215.

41. The billing rates for the lawyers and paralegals who primarily worked on this case are as follows:

Graham Hollis/Partner/Admitted 1985	\$720
Marta Manus/Associate/Admitted 2008	\$480
Sabrina Montalvo/Associate/Admitted 1999	\$430

1 Senior Paralegal \$225

2 Paralegal \$215

3 42. These hourly rates are fair and reasonable given the nature and complexity of the class
4 action litigation and experience level of the timekeeper. As a lawyer who practices class action
5 employment law throughout California I regularly attend seminars and have frequent contact with other
6 members of the legal community who work in the employment law class action field. Based on
7 information I receive from these sources, I believe the hourly billing rates charged by my lawyers are
8 well within the customary rates charged by other experienced employment law class action law firms in
9 the community.

10 43. My firm has incurred expenses for items such as filing fees, mediation fees, travel,
11 postage, online research, telephone, and copying, in the amount of \$42,093.90 including costs to be
12 incurred in attending the hearing on The Final Approval Motion. These are categories of expenses for
13 which my firm and other law firms customarily charges its fee-paying clients. In addition to these
14 expenses.

15 44. The final billable time summary includes 55 hours of attorney time and 20 hours of
16 paralegal time which is anticipated to be incurred in preparation of preparation for oral argument at the
17 Final Approval Hearing, traveling to San Jose to attend the Final Approval Hearing, and carrying out
18 post-settlement tasks such as claims administration and contacts with class members.

19 45. After exercising partner discretion in reducing some billed hours, the following
20 summarized the hours spent by the respective time keeper:

Timekeeper	Hours	Billable Rate
Graham Hollis/Partner	823.2	\$720
Marta Manus/Associate	1,345.10	\$480
Sabrina Montalvo/Associate	181.90	\$430
Kristina De La Rosa/Associate	38.5	\$375
Jeremy B. Freedman/Sr. Paralegal	409.10	\$225

Senior Paralegal	267	\$225
Paralegal	215.80	\$215
Case Manager	59.20	\$140
Other Associates	27.20	various
Total	3,367.00 hours	

46. I believe the attorney's fees in the amount of \$2,883,000 requested in this case are reasonable when cross-checked against the lodestar amount we have already incurred in prosecuting and settling the litigation. The total lodestar is \$1,541,353.50, and thus only necessitates a 1.88 multiplier, an amount which is well within the range which is customarily awarded in complex class action litigation like the present case.

LEAD CLASS COUNSEL HAS RECEIVED THE 25% BENCHMARK, OR MORE, IN ATTORNEY'S FEES IN SIMILAR WAGE AND HOUR CLASS ACTION LITIGATION

47. Although case law supports as high as a 50% fee award on common settlement funds of less than \$10 million, my firm requests a \$2,883,000 fee award which is 28.83% of the \$10 million Total Settlement Amount. As such, the amount requested is just slightly more than, requiring only a modest multiplier, the benchmark in the Ninth Circuit and is both "reasonable and fair" in light of the amount of work performed by my firm, and the amount of resources and labor employed in the representation of the class claims.

48. The following is a sample of my firm's attorneys' fee awards, as class counsel, that have been approved by federal courts:

- a. I was class counsel with two other firms in Corral v. Lifecare Solution, Inc., United States District Court for the Central District of California, Case Number 12-cv-10074-FMO (PJW). In 2014, Judge Fernando M. Olguin awarded class counsel a fee representing 30% of the \$3,000,000 common fund. The case was settled prior to class certification as is the case here.

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- b. In Lopez v. G.A.T. Airline Ground Support, et al., United States District Court, Case Number 09-cv-2268-AJB (BGS) Judge Anthony Battaglia awarded a 25% fee award on a \$600,000 common fund settlement including 1,394 class members.
- c. In Singer v. Becton Dickinson and Co., United States District Court for the Southern District of California, Case No. 08-cv-821-IEG, 2010 WL 2196104 (S.D. Cal. June 2010). Presiding Judge Irma Gonzalez awarded my firm a fee representing 33.33% of the \$1,000,000 common fund.
- d. I was class counsel in Birch, et al. v. Office Depot, United States District Court for the Southern District of California, Case Number 06CV 1690 DMS. There, Judge Dana Sabraw awarded a fee representing 40% of the common fund which totaled \$16,000,000 on claims made settlement.
- e. In Ingalls v. Hallmark Marketing Corp., United States District Court for the Central District of California, Case Nos. CV08-04342 VBF9 Ex), CV08-05330 VBF (FFMx), and CV08-0748 VBF (Ex), I was class counsel along with two other firms. Judge Fairbanks awarded a fee representing 33.33% of the \$5,625,000 common fund.
- f. In Cook v. Tiffany and Co., Case No. 09-cv-2634 JL (JMA) (S.D. Cal. 9/19/2011), Judge James Lorenz awarded Lead Class Counsel attorney's fees totaling \$1,029,270 representing approximately 25% of the common fund yielding a 1.8 multiplier in a wage an hour class action lawsuit affecting approximately 1,584 class members.
- g. In Delatorre v. Johnson Controls, Case No. 13-cv-03214 PSG (S.D. Cal. 1/14/2015), Judge Paul S. Grewal granted a 25% fee award resulting in a 2.0 multiplier on a \$2 million dollar settlement involving over 920 class members
- h. In Ellis v. Pacific Bell Telephone Co., Case No. SACV11-00627 CJC (FFMx), Judge Cormac Carney awarded Lead Class Counsel a \$1,033,333 fee award representing 33.33% of the common fund.

49. My firm seeks reimbursement for out-of-pocket costs, of \$42,093.91. The costs are summarized as follows:

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1	Court Filing Fees	\$ 503.00
2	Attorney Service/Messenger	\$ 1,331.50
3	Online Research	\$ 3,075.56
4	Mediator's Fee	\$ 4,500.00
5	Photocopies	\$ 12,724.78
6	Document Imaging	\$ 1,338.80
7	Faxes	\$ 259.00
8	Postage/Overnight mail	\$ 1,611.02
9	Telephone	\$ 1,442.50
10	Travel Expenses (counsel and client to mediation	\$ 11,665.50
11	And court hearings)	
12	<u>TOTAL</u>	<u>\$ 42,093.91</u>

13 50. These are categories of expenses for which I and other law firms customarily bill their
 14 fee-paying clients and are reasonably necessary to the litigation of the claims presented in this case.

15 51. I believe that all of these fees and costs are reasonable and was necessarily incurred in
 16 pursuit of the Settlement. I request that the court utilize this lodestar in evaluating and determining that
 17 \$2,833,000 in fees requested to be a reasonable amount to properly represent the interests of the
 18 Settlement Classes.

19 **THE CLASS REPRESENTATIVE SERVICE AWARDS ARE WELL JUSTIFIED**

20 52. Under the terms of the Settlement Agreement, Plaintiffs Danette Moore and Latresa
 21 Myers seek a service award payment in the amount of \$5,000 each and Plaintiffs Alanna Harrison and
 22 Alisa Valdez seek a service award payment in the amount of \$10,000 each for their service to the
 23 Settlement Class. By stepping forward and attaching their names to a class action lawsuit that in this
 24 internet age could be easily be discovered by prospective employers demonstrates that the Plaintiffs
 25 placed the interest of the Settlement Class above their own. Additionally, Plaintiffs made the decision,
 26 from the very beginning of the litigation, to protect the interest of the Settlement Class by not wavering
 27 from their decision to prosecute and settle the claims on behalf of putative class members for a
 28 settlement that was in the best interests of the Settlement Class.

53. As detailed in their declarations,¹ the Plaintiffs have spent a great deal of time and effort in assisting me and my associate with the litigation of this case. They maintained regular contact with us and were easily reachable for assistance and information. All four Plaintiffs were deposed and had to travel to Oakland for the mediation and San Francisco for their depositions. Plaintiffs Harrison and Valdez were both current employees of PetSmart at the San Leandro store when this lawsuit was filed in May 2012. They genuinely and realistically feared workplace retaliation because they were filing a lawsuit against their current employer. In July 2012, the online forum Law360 published an article about the lawsuit identifying all four of the class representatives by first and last name. As a result a Google search will identify several articles which identify them as being the employees who filed the lawsuit against PetSmart and they have legitimate concerns that this information might easily discourage a prospective employer from hiring them in the future. Overall, the four Plaintiffs have done an exceptional job participating and assisting us through the course of this lawsuit. As attested in their declarations, Plaintiffs: (1) assisted Lead Class Counsel in the pre-litigation investigation, in identifying witnesses and in locating evidence to support Plaintiffs' claims; (2) assisted in the preparation of the complaint and pleadings in this action; (3) had their deposition taken in San Francisco; (4) attended the full-day mediation; (5) made themselves available to answer questions and remain current and informed regarding the progress of the litigation and settlement; and (6) agreed to put the interests of the class members above their own self-interests at all times throughout this litigation. The four Plaintiffs were a crucial participant in the prosecution of this litigation and incurred significant personal risk by suing PetSmart. Each Plaintiff incurred the risk of losing and being subject to court-ordered defense costs and attorneys' fees. Plaintiffs Harrison and Valdez, who were both current employees at the time of the filing of the lawsuit, faced increased risk of retaliation by suing their current employer.

THE PAYMENT OF PAGA PENALTIES TO THE LWDA IS REASONABLE

54. The settlement of the claim for penalties under the Private Attorneys General Act

¹ Declaration of Danette Moore in support of Plaintiffs' Motion for Preliminary Approval, Ex. D hereto; Declaration of Latresa Myers in support of Plaintiffs' Motion for Preliminary Approval, Ex. E hereto; Declaration of Alanna Harrison in support of Plaintiffs' Motion for Preliminary Approval, Ex. F hereto; Declaration of Alisa Valdez in support of Plaintiffs' Motion for Preliminary Approval, Ex. G hereto; Declaration of Alisa Valdez in support of Plaintiffs' Supplemental Brief in support of Plaintiffs' Motion for Preliminary Approval, Ex. H hereto; Declaration of Alanna Harrison in support of Plaintiffs' Supplemental Brief in support of Plaintiffs' Motion for Preliminary Approval, Ex. I hereto.

(“PAGA”) for \$50,000.00, or 0.50% of the Total Settlement Amount, is reasonable under the circumstances. The parties negotiated a good faith amount for PAGA penalties, and this amount was not the result of self-interest at the expense of the Settlement Class Members. Of this amount, 75% (\$37,500) will be paid to the LWDA, and 25% (\$12,500) will be distributed to Settlement Class Members who file a valid Claim Form (“Claimants”) in addition to their pro rate settlement shares. (Settlement Agreement §IV (4.7)).

THE PAYMENT OF THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS IS REASONABLE

55. Simpluris provided the parties with an estimate for the cost of administration of the settlement, with a fee that was estimated not to exceed \$105,000. Simpluris has now documented fees and costs totaling \$119,500. Simpluris’ fees and costs were previously estimated based on a class size of approximately 16,413 and based on the considerable experience of Simpluris in handling these types of class action administrations they anticipated a response rate of 40%. However, the class size was ultimately 19,701 and the response rate of 50.24%, was well above the estimated response rate and created more work for the administrators. The parties have agreed that the additional \$14,500 fees and costs incurred by Simpluris, if approved by the court, will be paid from the Reserve Fund. The Reserve Fund of \$100,000 is allotted for use to, among other things, resolve any such disputes. The unused portion of the Reserve Fund will revert to the Net Distribution Amount, to be distributed to the Settlement Class Members. (Settlement Agreement § I (1.16)).

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Executed on February 10, 2015, in San Diego, California.

Email: ghollis@grahamhollis.com

EXHIBIT A

1 GRAHAMHOLLIS APC
 2 GRAHAM S.P. HOLLIS (SBN 120577)
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6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

12 DANETTE M. MOORE, LATRESA MYERS,
 13 ALANNA HARRISON and ALISA VALDEZ
 individually and on behalf of others similarly
 situated,

14 Plaintiffs,

15 v.

16 PETSMART, INC, and Does 1 through 100,
 17 inclusive,

18 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF GRAHAM S.P. HOLLIS
 IN SUPPORT OF PLAINTIFFS' UNOPPOSED
 MOTION FOR ORDER (1) PROVISIONAL
 CERTIFICATION OF SETTLEMENT CLASS;
 (2) PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT; (3) APPROVAL OF
 CLASS NOTICE AND NOTICE PLAN; (4)
 APPOINTMENT OF CLASS COUNSEL AND
 CLASS REPRESENTATIVES; AND (5)
 SETTING A FINAL APPROVAL HEARING**

Date: March 7, 2014
 Time: 9:00 a.m.
 Courtroom: 4 –5th Floor
 Judge: Hon. Edward J. Davila

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

I, Graham S.P. Hollis, state and declare:

1. I am an attorney at law licensed to practice before all courts of the State of California. I am a partner with the law firm of GrahamHollis, A.P.C. ("GrahamHollis") in San Diego, California. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would competently testify thereto.

2. My law firm, GrahamHollis and my associate Marta Manus are the attorneys of record for Plaintiffs Danette Moore ("Moore"), Latresa Meyers ("Meyers"), Alanna Harrison ("Harrison"), and Alisa Valdez ("Valdez") (collectively "Plaintiffs"). I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement in the above captioned case which seeks an order for: (1) provisional certification of the settlement class; (2) preliminary approval of the class action settlement; (3) approval of notice and notice plan; (4) appointment of GrahamHollis, A.P.C. as Class Counsel, and Plaintiffs Danette Moore, Latresa Myers, Alanna Harrison, and Alisa Valdez Class Representatives; and (5) setting a final approval hearing. The Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement") is attached hereto as Exhibit 1.

Class Counsel's Class Action Experience

3. I have been a member of the State Bar of California since 1985. I am also admitted to practice in various Districts of United States District Court. I have personally tried many bench and jury trials to verdict in various courts in California. I have represented employees and employers in employment litigation matters since 1995. My involvement in various forms of class action litigation spans more than twenty years.

4. Over the course of just the past six years, I have been appointed as class counsel in the following employment cases, all of which were successfully resolved: Birch v. Office Depot, Inc., United States District Court for the Southern District of California, No. 06 CV 1690 DMS (WMC) (16,722 class members - 40% fee award on \$14 M settlement); Malone, et al. v. Praxair Corporation, Superior Court for the County of San Bernardino (approximately 57 class members, 40% Fee Award); Singer v. Becton Dickinson and Co., No. 08-cv-821-IEG, 2010 WL 2196104, (S.D. Cal. June 1, 2010) (266 class members, 33.33% fee award); Weaver v. Hallmark Marketing Corporation, United States District Court for the Central District of California (3,846 class members, 33.33% fee award); Morales

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1 v. Sony Corporation Inc., Superior Court for the County of San Diego (4,742 class members) (injunctive
2 relief settlement—full amount of requested Lodestar fees awarded); Thomson v. LawInfo.com, Superior
3 Court for the County of San Diego (33.33% fee award); Solis v. Check Agencies of California, Superior
4 Court for the County of San Diego (33.33% fee award); Vest v. Scher Tire, Inc., Superior Court for the
5 County of Riverside (approximately 768 class members, 33.33% fee award); Jackson v. Vulcan
6 Materials, Superior Court for the County of Ventura (37.5% fee award); Demers v. IHOP, Superior
7 Court for the County of San Diego (33.33% fee award); Fennessey v. Round Table Pizza, Inc., Superior
8 Court for the County of San Diego, (16,333 class members, 28% fee award requested and granted due to
9 defendant's financial condition); Falcon v. Flight Suits, Inc., Superior Court for the County of San
10 Diego (approximately 550 class members, 33.33% fee award and San Diego Superior Court); Cantu, et
11 al. v. AT&T, Superior Court for the County of Los Angeles (33.33% fee award); Bracy v. Speedy Cash,
12 Superior Court for County of San Bernardino (approximately 222 class members, 22.69% fee request
13 and awarded); Cook v. Tiffany and Company, United States District Court for the Southern District of
14 California (1,584 class members, \$4,148,270 settlement); Irmen v. Raphael's Party Rentals, Superior
15 Court for the County of San Diego (845 class members, 40% fee award); Jeffries v. Praxair Services,
16 Inc., Superior Court for the County of San Bernardino (35% fee awarded); Julio v. L&M Tire Co., Inc.,
17 Superior Court for the County of San Diego (1,087 class members, 33% fee award); Calhoun v. General
18 Petroleum, Superior Court for the County of Los Angeles (approximately 300 class members, 40% fee
19 awarded); Scaglione, et al. v. M.O. Dion & Sons, Superior Court for the County of San Bernardino
20 (30% fee awarded); Johnson, et al., v. Anthony Charlton, Inc., d.b.a. Anthony's Auto Center, Superior
21 Court for the County San Diego; Mahoney v. AT&T Corp., Superior Court for the County of Los
22 Angeles, (approximately 719 class members, 33.33% fee awarded); Wright v. AMF Bowling Centers,
23 Inc., Superior Court for the County of Los Angeles (4,914 class members); Duarte v. Rainbow Disposal
24 Co., Inc., Superior Court for the County of Orange (110 class members, 40% fee awarded); Iskandaryan
25 v. Casual Male Retail Group, Inc., Superior Court for the County of Los Angeles (approximately 727
26 class members, 33% fee awarded); Lucarini v. Dresser, Inc., Superior Court for the County of Los
27 Angeles; Stevenson v. Falcon Critical Care Transport, et al., Superior Court for the County of Contra
28 Costa; Lopez v. GAT, United States District Court for the Southern District of California; Payton, et al.,

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1 v. Atlantic Aviation Investors, Inc., et al., Superior Court for the County of Orange (162 class members,
2 40% fee awarded); Chavez v. Real Time Staffing Services, Inc., Superior Court for the County of San
3 Diego; Wright v. Menzies Aviation, Superior Court for the County of Los Angeles; Williams v.
4 ABTTC, Superior Court for the County of Los Angeles; Turnage v. Park Management Corporation,
5 Superior Court for the County of Solano; Ellis v. Pacific Bell Telephone Company, et al., United States
6 District Court for the Central District of California (approximately 84 Class members, 33.33% fee
7 awarded); Casas, et al. v. Pacific Bell Company, Superior Court for the County of San Francisco; Laux
8 v. Van Nuys Skyways, Inc., et al., Superior Court for the County of Ventura; Green v. Lawrence Service
9 Company, United States District Court for the Central District of California; Well v. Hooters of
10 America, Superior Court for the County of San Diego; Escoto-Miranda v. Evans Tire Service Centers,
11 Inc., Superior Court for the County of San Diego; and

12 5. I and my firm are serving as plaintiffs' counsel of record in the following wage/hour and
13 employment class action cases: Jimenez v. Menzies Aviation, Inc., United States District Court for the
14 Northern District of California; Stoddart v. Express Services, Inc., United States District Court for the
15 Eastern District of California; Baldomero v. Isocare Convalescent Hospital, Superior Court for the
16 County of Los Angeles;; Ramos v. Okorocha, Individually and d.b.a. Isocare Convalescent Hospital of
17 Glendale, Superior Court for the County of Los Angeles; Huerta v. Venture Petroleum Company, Inc.,
18 Superior Court for the County of San Diego; Frugard v. Unified Protective Services, et al., Superior
19 Court for the County of Los Angeles; Clancy, et al. v. Scripps Health, Superior Court for the County of
20 San Diego; Ledbetter v. Entrepreneurial Ventures, Inc., Superior Court for the County of Santa Clara;
21 Lawton-Lewis v. Stronghold, LTD, Superior Court for the County of Contra Costa; Fong v. Regis
22 Corporation, United States District Court for the Northern District of California; Solaberrieta v. Baker
23 Hughes Oilfield Operations, Inc., et al., Superior Court for the County of Los Angeles; Stafford v.
24 Dollar Tree Stores, Inc., United States District Court for the Eastern District of California; De La Rosa
25 v. Quten Research Institute, LLC, Superior Court for the County of San Diego; Flannery v. AGR Group
26 California, LLC, et al., Superior Court for the County of Orange; Radford v. ACD Direct, Inc., Superior
27 Court for the County of San Diego; Mora v. San Diego Auto Scrubber, Inc., Superior Court for the
28 County of San Diego; Madera v. Universal Alloy Corporation, Superior Court for the County of Orange;

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Loveless v. ASM Affiliates, Superior Court for the County of San Diego; Jimenez v. Providian Staffing Corporation, Superior Court for the County of Riverside; Letuligasenoa v. International Paper Company, United States District Court for the Northern District of California; and Rodriguez v. Old Dominion Freight Line, Inc., United States District Court for the Central District of California.

6. I have served as defense counsel in the following class action cases: Garza, et al. v. SRH Investments LLC, et al., Superior Court for the County of Los Angeles; Avila, et al. v. Gateway Ivey Ranch Associates, et al., Superior Court for the County of San Diego; Cabrera, et al. v. Fieldstone Communities, Inc., et al., Superior Court for the County of San Diego; Cheatwood, et al. v. Greystone Homes, Inc., et al., Superior Court for the County of San Bernardino; Castro, et al. v. Kaufman & Broad of Southern California, Inc. et al., Superior Court for the County of San Diego; Flores, et al. v. Eastlake Trails Co. LLC et al., Superior Court for the County of San Diego; Pacheco, et al. v. WL Coral Gate Associates, et al., Superior Court for the County of San Diego; Garcia, et al. v. Cambridge Homes, et al., Superior Court for the County of Riverside; Harris, et al. v. LNC Properties, LTD, et al., Superior Court for the County of San Bernardino; Soriano, et al. v. Kaufman and Broad of Southern California, Inc., et al., Superior Court for the County of Kern; Rodriguez, et al v. Epic Development Corporation, et al., Superior Court for the County of Kern; Gates, et al. v. Kaufman and Broad Coastal Valleys, Inc., et al., Superior Court for the County of Los Angeles; Zimmerman, et al. v. West Venture Development, Inc., et al., Superior Court for the County of San Bernardino; Robles, et al. v. Rockfield Development Corporation, et al., Superior Court for the County of San Bernardino; Riley, et al. v. So Cal Housing Partners, LLC, et al., Superior Court for the County of San Bernardino; Castillo, et al. v. LNC Properties LTD, et al., Superior Court for the County of San Bernardino; Reynoso, et al. v. DOES 1-50, inclusive, Superior Court for the County of San Diego; Frais v. Forecast Group, Superior Court for the County of Los Angeles; Haney v. The Presley Group, Superior Court for the County of Riverside; Le Doux v. KB Homes, Superior Court for the County of Los Angeles; Long v. West Venture, Superior Court for the County of Los Angeles; Manning v. Presley Homes, Superior Court for the County of Los Angeles; McLellan v. Stratham Group, Superior Court for the County of Los Angeles; and Winkler v. West Venture, Superior Court for the County of Los Angeles.

7. In just the last 5 years my associate Marta Manus is or has served as plaintiffs' counsel,

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or class counsel of record in the following wage/hour and employment class action cases: Stoddart v. Express Services, Inc., United States District Court for the Eastern District of California; Fong v. Regis Corporation, United States District Court for the Northern District of California; Jimenez v. Providian Staffing Corporation, Superior Court for the County of Riverside; Letuligasenoa v. International Paper Company, United States District Court for the Northern District of California; Calhoun v. General Petroleum, Superior Court for the County of Los Angeles (approximately 300 class members, 40% fee awarded); Scaglione, et al. v. M.O. Dion & Sons, Superior Court for the County of San Bernardino (30% fee awarded); Mahoney v. AT&T Corp., Superior Court for the County of Los Angeles, (approximately 719 class members, 33.33% fee awarded); and Cantu, et al. v. AT&T, Superior Court for the County of Los Angeles (33.33% fee award); Ellis v. Pacific Bell Telephone Company, et al., United States District Court for the Central District of California (approximately 84 Class members, 33.33% fee awarded); Casas, et al. v. Pacific Bell Company, Superior Court for the County of San Francisco.

8. Ms. Manus and I have extensive experience handling class actions, other complex litigation and wage and hour claims, such as those asserted in this action. Our knowledge of the applicable wage and hour laws is evidenced by our representation of employees in numerous disputes concerning receipt of pay in connection with their employment in state and federal courts in California.

The Settlement Terms

9. The basic terms of the proposed Settlement Agreement are as follows:

a. PetSmart is to pay the total and all inclusive Total Settlement Amount of \$10,000,000 (the "Settlement Sum"), which includes all payments to the Settlement Class Members, Settlement Class Counsel, California Labor and Workforce Development Agency, all tax obligations of Plaintiffs, Settlement Class Members and PetSmart arising out of the settlement and the costs of settlement administration.

b. Settlement Class Members who submit a timely Claim Form ("Claimant") will receive a portion of the Settlement Sum in an amount based upon the total gross compensation paid to each Settlement Class Member by PetSmart between May 23, 2008 and the date of preliminary approval of the Settlement ("Covered Timeframe").

c. To the extent any Settlement Class Member, who does not file a request for

1 exclusion fails to submit a Claim Form, the Individual Settlement Amount attributable to that Settlement
 2 Class Member shall be distributed to Claimants within that Settlement Class Member's Settlement Class
 3 ("Pet Stylist Settlement Class" or "Non-Exempt Employee Settlement Class") in proportion to their
 4 Individual Settlement Amounts.

5 d. Plaintiffs will request, and PetSmart will not object to, an award of attorneys' fees
 6 and costs of up to \$3,333,333 (33-1/3%) of the Total Settlement Amount to be deducted from the Total
 7 Settlement Amount of \$10,000,000. Subject to Court approval, Class Counsel will be paid reasonable
 8 and actual costs incurred in prosecuting this Litigation from the Total Settlement Sum ("Litigation
 9 Costs").

10 e. Plaintiffs will request, and PetSmart will not object to, service awards to each of
 11 the Class Representatives, as an enhancement for their services as Class Representatives (a total of
 12 \$30,000).

13 f. The Settlement Administrator, Simpluris, which has been mutually selected by the
 14 parties, will administer the Settlement, with the reasonable costs of administration to be paid from the
 15 Total Settlement Sum.

16 10. The proposed Settlement satisfies all of the criteria for preliminary approval under federal
 17 law and falls well within the range of possible approval. The proposed Settlement Class is appropriate
 18 for provisional certification for settlement purposes. Accordingly, Plaintiffs move the Court to: (1)
 19 provisionally certify the settlement class; (2) preliminarily approve the Class Action Settlement; (3)
 20 approve the class notice and notice plan; (4) appoint Class Counsel and Class Representatives; and (5)
 21 set a final approval hearing.

22 Case Background and Procedural History

23 11. This case involves the wage and hour claims of approximately 16,400 current and former
 24 non-exempt employees who are eligible to participate in the settlement and who were employed by
 25 PetSmart, Inc. California between May 23, 2008 and the present, the period covered by this Settlement.

26 12. On July 5, 2011, Class Counsel, on behalf of Plaintiff Danette Moore and Plaintiff
 27 Latresa Myers filed a notice with the Labor and Workforce Development Agency ("LWDA") alleged
 28 that PetSmart had violation the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.*

1 (“PAGA”) and various provisions of the California Labor Code. On August 30, 2011, the LWDA
 2 provided notice to Plaintiff Moore and Plaintiff Myers and PetSmart of its intent not to investigate the
 3 allegations. On August 30, 2011, Class Counsel, on behalf of Plaintiff Alanna Harrison and Plaintiff
 4 Alisa Valdez filed a notice with the LWDA alleged that PetSmart had violation the PAGA and various
 5 provisions of the California Labor Code. On October 24, 2011, the LWDA provided notice to Plaintiff
 6 Harrison and Plaintiff Valdez and PetSmart of its intent not to investigate the allegations.

7 13. On May 23, 2012, Plaintiffs filed this lawsuit in the Superior Court, County of Alameda
 8 on behalf of Plaintiffs and certain non-exempt California employees of PetSmart. Defendant removed
 9 the case to the United States District Court, Northern District of California on July 9, 2012.

10 14. Plaintiffs’ allege that PetSmart violated the California Labor Code, relevant Wage Order
 11 of the California Industrial Welfare Commission, and the California Unfair Competition Law (Bus. &
 12 Prof. Code § 17200, *et seq.* with PetSmart’s alleged policy of: (1) failing to pay minimum and overtime
 13 wages for all hours worked including time spent performing non-productive duties and working off-the-
 14 clock; (2) failing to reimburse for reasonably incurred work-related expenses (including grooming tools
 15 and equipment); (3) failing to compensate for meal and rest period violations; (4) failing to properly
 16 calculate vacation pay; (5) failing to timely and properly pay wages due upon termination of
 17 employment; (6) failing to provide suitable seats; and (7) engaging in unlawful/unfair business practices.
 18 In addition to the class action wage and hour claims, each of the four named Plaintiffs has an individual
 19 claim against PetSmart for failure to provide reasonable accommodation and failure to engage in the
 20 interactive process in violation of the California Fair Employment and Housing Act (FEHA). Plaintiff
 21 Danette Moore also has an individual claim against PetSmart for wrongful termination in violation of
 22 public policy. The proposed Settlement relates only Plaintiffs’ class action and representative action
 23 claims. Plaintiffs’ individual claims have not yet been settled. The parties agreed to postpone settlement
 24 discussions related to Plaintiffs’ individual claims until after the resolution of the class and
 25 representative action claims.

26 15. Plaintiffs’ allege that PetSmart’s compensation scheme pays members of the Pet Stylists
 27 Settlement Class (“Pet Stylists”) on a piece-rate basis because Pet Stylists are compensated for grooming
 28 services rendered at the rate of 50 % of the net sale price paid by the customer for the groom.

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PetSmart's compensation scheme pays Pet Stylists for time spent performing grooming services. Pet Stylists have an hourly "fall back" rate. If a Pet Stylist's piece rate earnings in a given workweek do not exceed what they would have earned at their fall back rate, PetSmart pays the hourly fall back rate for all hours worked. In these workweeks, it is undisputed that Pet Stylists are paid for all hours worked at their fall back rate. However, if the Pet Stylist earns more in piece rate in a given workweek than they would have earned at their fall back rate, they are paid only the piece rate and are said to have "commissioned out." Plaintiffs' allege that in workweeks in which Pet Stylists commission out, PetSmart fails to pay at least minimum wages for all hours worked because in addition to performing grooming services, Pet Stylists are required to perform "non-productive" duties, work for which they do not receive any additional compensation separate and apart from the piece-rate they earn while grooming dogs. Non-productive duties include working in various departments throughout the store, cashiering, assisting customers, stocking store shelves with product, taking inventory, cleaning the grooming salon and grooming tools, making customer appointments, and answering the telephone in the grooming salon. Because Pet Stylists are not paid any additional wages during workweeks in which they commission out, Plaintiffs allege that PetSmart fails to pay at any wages for the time spent performing the non-productive duties. Defendant argued, that the existence of the fall back rate satisfied their obligations to pay at least minimum wage for all hours worked in workweeks where the Pet Stylist didn't commission out and that no additional wages were owed for time spent performing non-productive duties or rest breaks. Defendant also argued that in workweeks in which Pet Stylists did commission out, they earned more on average per hour than minimum wage and their fall back rate when their piece rate compensation was averaged over the total number of hours worked in that workweek. Plaintiffs' argued that this pay averaging is illegal under California law. Additionally, Plaintiffs allege that any time spent taking rest periods during workweeks when Pet Stylists commissioned out was unpaid because Pet Stylists were only paid piece rate compensation in these workweeks and were therefore not provided with paid rest breaks.

16. Plaintiffs also allege that PetSmart failed to provide Pet Stylists with the necessary grooming tools to perform their grooming job and failed to reimburse for the cost of grooming tools Pet Stylists were required to purchase and maintain. PetSmart required Plaintiffs and other Pet Stylists to

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1 purchase a grooming tool kit in order to participate in the PetSmart grooming academy, which
2 employees had to complete prior to becoming a Pet Stylist. The grooming tool kit cost hundreds of
3 dollars. Additionally, throughout the course of their grooming career with PetSmart, Pet Stylists had to
4 purchase various grooming supplies including, among other things, grooming clippers, replacement
5 blades, scissors, and brushes. PetSmart purported to provide the necessary grooming tools in the
6 grooming salon for the use of Pet Stylists. However, in pre-mediation discovery, Plaintiffs obtained the
7 Grooming Tool Sign Out Sheets which showed that typically only one pair of grooming clippers was
8 available at each store for Pet Stylists to check out to borrow. The Grooming Tool Sign Out Sheets
9 showed which Pet Stylist had checked out the single pair of clippers each shift, supporting Plaintiffs'
10 claim that Pet Stylists were not provided with adequate grooming tools and were in fact required to
11 bring their own grooming tools, including grooming clippers, to work every shift. Additionally,
12 Plaintiffs obtained anecdotal evidence from the Pet Stylists interviewed that supported their position.

13 17. On behalf of the Non-Exempt Employee Settlement Class, Plaintiffs allege that PetSmart
14 failed to provide its non-exempt employees with legally compliant meal and rest periods and failed to
15 pay wages for work performed off-the-clock because these employees were frequently interrupted by
16 PetSmart's customers during meal and rest breaks. PetSmart's policy required employees to assist
17 customers and sometimes this occurred while they were on a break. A frequent scenario was when an
18 employee clocked out for lunch at the time clock and then had to walk through the store to the break
19 room. Oftentimes the employees—who would be in uniform—would be asked questions by customers
20 while the employee was "off the clock."

21 18. During the course of investigation, Plaintiffs learned that PetSmart calculates the vacation
22 wages of Pet Stylists by averaging the piece rate wages earned in the previous 26 weeks to obtain an
23 average hourly rate, which is then used to pay vacation wages. Because Plaintiffs allege that Pet Stylist
24 were not paid for all hours worked in workweeks when they commissioned out, Pet Stylists' vacation
25 wages were miscalculated and underpaid.

26 19. Additionally, Plaintiffs allege that from 2005 through April 2011, PetSmart maintained
27 an illegal written meal and rest break policy, providing that employees receive one 30 minute unpaid
28 meal break if employees worked more than six hours but less than eight and one 15 minute rest break if

1 employees work more than four hours but less than six. Plaintiffs' position is that the correct standard is
 2 that a meal break should be provided on shifts greater than five hours and rest breaks on shifts of three
 3 and a half hours or more.

4 20. Counsel for the parties negotiated and jointly drafted the Joint Rule 26(f)
 5 Report/Conference Statement and filed it with the Court on November 11, 2012. In the Joint Rule 26(f)
 6 report, the parties indicated their willingness to attend mediation with a private mediator. The parties
 7 agreed to postpone formal discovery to focus their efforts on mediation and settlement.

8 21. Prior to commencement of formal discovery, the parties agreed to attend private
 9 mediation with experienced employment law mediator Jeffrey Ross. The parties agreed that 10% of the
 10 locations (selected randomly by Plaintiff's counsel utilizing an Excel Randomizer program) would
 11 provide an adequate sample. PetSmart produced employment data and documents for non-exempt
 12 employees from 14 stores of its 132 California stores, a 10.6% sample. PetSmart produced in excess of
 13 33,000 pages of documents as well as electronic personnel and payroll data regarding PetSmart's
 14 employees. Plaintiffs spent many hours analyzing this information and data. PetSmart provided
 15 Plaintiffs with the names and contact information of all current and former non-exempt employees
 16 employed at the 14 sample stores. Plaintiffs' counsel interviewed 47 putative class members, including
 17 25 groomers, to obtain relevant information for mediation. Plaintiffs' counsel interviewed current and
 18 former employees from the following California PetSmart locations: Freemont, Irvine, Merced,
 19 Milpitas, Santa Maria, Sacramento, Mountain View, Lancaster, La Jolla, Palmdale, Pelandale, Rohnert
 20 Park, Santa Cruz, San Jose, San Leandro, Santa Maria, Shingle Springs, Tustin, and Oceanside. Some of
 21 the class members interviewed by Plaintiffs' counsel worked at multiple PetSmart locations throughout
 22 California.

23 22. In preparation for mediation, Class Counsel prepared a comprehensive damage analysis
 24 based on information gathered from class member interviews and employment data provided by
 25 PetSmart. Class Counsel prepared an extensive mediation brief containing detailed review of the
 26 evidence and outlining the complex legal issues in this case. In February 2013, Plaintiffs took the
 27 depositions of PetSmart's person most knowledgeable (PMK) about PetSmart's compensation policies
 28 and practices for California employees as well as the PMK regarding PetSmart's compliance with IWC

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1 Wage Order 7-2001. In March 2013, Defendant took the deposition of each of the four named Plaintiffs.
2 The parties each propounded one set of special interrogatories and requests for production of documents
3 but agreed to hold off on serving their responses until after the completion of mediation in order to
4 preserve the parties' resources and time and focus their efforts on resolving the case at mediation. I
5 believe the information exchanged thus far is sufficient for the parties to make an informed decision
6 about the resolution of this case at this time.

7 23. On April 9, 2013, the parties engaged in mediation with mediator Jeffrey Ross. PetSmart
8 was represented by Michelle Heverly from Littler Mendelson, P.C. Plaintiffs were represented by
9 myself and Marta Manus of GrahamHollis APC. Although the parties were unable to reach a settlement
10 agreement on the day of the mediation, the parties continued their settlement negotiations through
11 mediator Jeffrey Ross and ultimately, on May 15, 2013, accepted the mediator's proposal, reaching the
12 settlement on the terms for which they now seek preliminary approval. The parties devoted substantial
13 time and effort to reaching a proposed settlement. At all times, the negotiations were conducted at arms'
14 length and through the mediator. Since accepting the mediator's proposal in May 2013, the parties have
15 engaged in extensive meet and confer discussions to finalize the Settlement.

16 24. The Plaintiffs now seek, and Defendant will not oppose, preliminary approval of the
17 Settlement reached through the mediator.

18 **The Settlement Agreement**

19 25. The proposed Settlement resolves all class and representative action claims of the
20 Plaintiffs and the Settlement Class Members against PetSmart. The detailed Settlement Agreement is
21 attached hereto as Exhibit 1. The settlement terms may be summarized as follows:

22 **A. Settlement Amount**

23 26. The Settlement provides that PetSmart will pay the sum of \$10,000,000.00 ("Total
24 Settlement Amount"). (Settlement Agreement, ¶ 1.20.) Subject to Court Approval, the Total Settlement
25 Amount will be used to make all payments to the Settlement Class Members, Settlement Class Counsel
26 for attorneys' fees and costs, California Labor and Workforce Development Agency ("LWDA"), all tax
27 obligations of Plaintiffs, Settlement Class Members, and PetSmart arising out of the settlement and the
28 costs of settlement administration. Once these deductions are made, the balance of the Total Settlement

Amount will be available for distribution to Settlement Class Members ("Net Distribution Amount").
(Settlement Agreement, ¶ 1.11.)

B. Settlement Class

27. The Net Distribution Amount will be distributed to Settlement Class Members who submit a valid and timely Claim Form/FLSA Consent Form ("Claim Form"). The proposed Claim Form is attached hereto as Exhibit 2.

28. The Settlement Class is defined as follows:

All individuals who are or were employed by PetSmart as a Pet Stylist, Groomer, Grooming Trainee, and/or Salon Manager in California at any time during the period from May 23, 2008 to the present ("Pet Stylist Settlement Class");

All individuals who are or were employed by PetSmart as an hourly paid, non-exempt employee in California at any time during the period May 23, 2008 to the present in a position other than Pet Stylist, Groomer, Grooming Trainee, or Salon Manager ("Non-Exempt Employee Settlement Class")

The Settlement Class includes a Waiting Time Penalties Settlement Sub-Class defined as follows:

All individuals who are members of the Non-Exempt Employee Settlement Class or the Pet Stylist Settlement Class who separated from their employment with PetSmart at any time between May 23, 2009 and the date of preliminary approval of the settlement ("Waiting Time Penalties Settlement Sub-Class").

(Settlement Agreement, ¶ 1.16.)

C. Calculation of Class Members' Individual Settlement Amounts

29. Under the Settlement Agreement, "Claimants" are those Settlement Class Members who submit a valid and timely Claim Form. (Settlement Agreement, ¶ 1.3.) The "Individual Settlement Amount" is the amount of money that shall be paid to each Claimant and includes any taxes withheld from the Settlement paid to such Claimants. (Settlement Agreement, ¶ 1.9.)

30. Assuming the Court approves Plaintiffs' request for service awards and Class Counsel's attorneys' fees and costs, as well as the costs of settlement administration, a Net Distribution Amount, the amount left after the payment of the above will be available for distribution to Claimants. (Settlement Agreement, ¶ 1.9, § IV, ¶¶ 4.2 – 4.5.) If the Court does not award 33.33% of the Total Settlement Amount as attorneys' fees and costs, the unawarded amount shall be returned to PetSmart and shall not be available for distribution to the Settlement Class. (Settlement Agreement § IV, ¶ 4.10.)

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31. A portion of the Net Distribution Amount will first be allocated to the Waiting Time Penalties Settlement Sub-Class for penalties pursuant to Labor Code section 203. The amount allocated to the Waiting Time Penalties Settlement Sub-Class will be deducted from the Net Distribution Amount prior to the calculation of the Individual Settlement Amounts of Claimants. Each member of the Waiting Time Penalties Settlement Sub-Class who was employed by PetSmart in California as a Pet Stylist, Groomer, Grooming Trainee or Salon Manager at the time of separation from employment will be entitled to receive \$400 as a waiting time penalty in addition to their Individual Settlement Amount. Each member of the Waiting Time Penalties Settlement Sub-Class who was employed by PetSmart in a position other than Pet Stylist, Groomer, Grooming Trainee or Salon manager at the time of separation from employment will be entitled to receive \$200 as a waiting time penalty in addition to their Individual Settlement Amount. (Settlement Agreement § IV ¶ 4.4.)

32. After deducting from the Net Distribution Amount the payments claimed by the Waiting Time Penalties Settlement Sub-Class, two-thirds (2/3) of the remaining Net Distribution Amount will be allocated to payment of the Individual Settlement Amounts of the Pet Stylist Settlement Class Members and one-third (1/3) of the remaining Net Distribution Amount will be allocated to those Settlement Class Members who are members of the Non-Exempt Employee Settlement Class. (Settlement Agreement § IV ¶ 4.5.) The allocation of the Net Distribution Amount between the Pet Stylist Settlement Class and the Non-Exempt Employee Settlement Class is based on the proportional value of the claims of the classes. The claims alleged on behalf of the Pet Stylists Settlement Class account for 2/3 of the total amount of damages estimated and the claims alleged on behalf of the Non-Exempt Employee Settlement Class account for 1/3 of the total amount of damages which Plaintiffs' damages analysis yielded.

33. The Individual Settlement Amount for each Claimant who is a member of the Pet Stylist Settlement Class will be determined as follows: After the deductions from the Net Distribution Amount for the payments to the Waiting Time Penalties Settlement Sub-Class, the Settlement Administrator will divide two-thirds (2/3) of the remaining Net Distribution Amount by the total gross (pre-tax) compensation paid to Pet Stylist Settlement Class Members for the time period when such Pet Stylist Settlement Class Members were employed as Pet Stylists, Groomers, Grooming Trainees and/or Salon Managers during the Covered Timeframe to determine a multiplier ("Pet Stylist Multiplier"). The

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Individual Settlement Amount payable to each Pet Stylist Settlement Class Member will equal that Claimant's gross (pre-tax) compensation earned during the Covered Timeframe times the Pet Stylist Multiplier. (Settlement Agreement § IV ¶ 4.5(a).)

34. The Individual Settlement Amount for each Claimant who is a member of the Non-Exempt Employee Class will be determined as follows: After the deductions from the Net Distribution Amount for the payments to the Waiting Time Penalties Settlement Sub-Class, the Settlement Administrator will divide one-third (1/3) of the remaining Net Distribution Amount by the total gross (pre-tax) compensation paid to Non-Exempt Employee Settlement Class Members for the time period when such Non-Exempt Employee Class Members were employed in positions other than Pet Stylists, Groomers, Grooming Trainees and/or Salon Managers during the Covered Timeframe to determine a multiplier ("Non-Exempt Employee Multiplier"). The Individual Settlement Amount payable to each Non-Exempt Employee Settlement Class Member will equal that Claimant's gross (pre-tax) compensation earned during the Covered Timeframe times the Non-Exempt Employee Multiplier. (Settlement Agreement § IV, ¶ 4.5(b).)

35. The parties agree that it is more equitable to use Claimants' gross compensation earned during the Covered Timeframe instead of the number of work weeks worked to calculate their Individual Settlement Amount. A detailed analysis of PetSmart's payroll records revealed that there was a wide range of hourly rates earned by the PetSmart employees, particularly among groomers. Additionally, many employees worked part-time. Based on our investigation we determined that those employees who worked more hours were more likely to suffer more unpaid time. Also the higher the hourly rate for an employee that suffers unpaid time, the greater will be the amount of money owed to the particular employee. If the class members were paid from the settlement based on work weeks this might result in an inequitable distribution of the settlement. Employees who worked fewer hours per week or were paid less might be paid the same amount per work weeks there coworkers who had more unpaid time or lost more because their hourly rate was higher. By paying the class members according to their relative W-2 income during the class period the allocation is much more likely to be fair.

36. The Individual Settlement Amounts will be allocated among wages, interest, and civil (PAGA) penalties. Fifty percent (50%) of each Claimant's Individual Settlement Amount shall

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represent wages. Fifty percent (50%) of each Claimant's Individual Settlement Amount shall represent interest and penalties. The portion of each Claimant's Individual Settlement Amount representing wages will be subject to standard employment tax withholdings (e.g., withholdings for state and federal income tax, employee FICA tax, California SDI, etc.) with the Settlement Administrator remitting all such employment tax withholdings directly to the pertinent state and federal taxing authorities. The portion of each Claimant's Individual Settlement Amount representing interest or penalties will be reported on a Form 1099 provided to each Claimant, with the required copies of the Form 1099's provided to the pertinent taxing authorities. Employer tax obligations on any amounts paid to Plaintiffs and Claimants will be paid from the Total Settlement Amount. (Settlement Agreement § IV, ¶ 4.6.)

37. Plaintiffs cannot calculate the exact Individual Settlement Amount per Claimant for a number of reasons, including because, among other things, they do not presently know the exact amount of (1) fees and costs that will be awarded to Class Counsel by the Court; (2) the total amount of the employer's share of the payroll taxes on the Individual Settlement Amounts that will be deducted from the Total Settlement Amount; (3) the total number of Claimants; and (5) the total amount of gross compensation paid by PetSmart to Claimants. Assuming the Court awards the full amount of fees and costs requested by Class Counsel, approves \$105,000 in settlement administration costs to Simpluris, \$30,000 in class representative service awards, and the payment of \$37,500 (75% of \$50,000) to the LWDA for PAGA penalties, the Net Distribution Amount, excluding payroll taxes, available for distribution to Claimants will be approximately \$6,494,000.00.

38. From the estimated Net Distribution Amount of \$6,494,000.00, the amount that the parties agreed allocated to the Waiting Time Penalties Settlement Sub-Class will be deducted prior to dividing the balance of the Net Distribution Amount between the Pet Stylist Settlement Class and the Non-Exempt Employee Settlement Class. Based on the data provided to Class Counsel by PetSmart, there are approximately 908 former Pet Stylists Settlement Class Members who are also members of the Waiting Time Penalties Settlement Sub-Class, and who, according to the terms of the Settlement, will receive a payment of \$400 as a waiting time penalty and there are approximately 10,041 former Non-Exempt Employee Settlement Class Members who are also members of the Waiting Time Penalties Settlement Sub-Class, and who, according to the terms of the Settlement, will receive a payment of \$200

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as a waiting time penalty. Therefore, approximately \$363,200 of the Net Distribution Amount of \$6,494,000 will be allocated to the Pet Stylists Settlement Class Members who are also members of the Waiting Time Penalties Settlement Sub-Class as a waiting time penalty and approximately \$2,008,200 of the Net Distribution Amount will be allocated to the members of the Non-Exempt Employee Settlement Class Members who are also members of the Waiting Time Penalties Settlement Sub-Class as a waiting time penalty. On an individual basis, members of the Pet Stylist Settlement Class who are also members of the Waiting Time Penalties Settlement Sub-Class will receive a greater amount (\$400 per individual) as a waiting time penalty because, according to the PetSmart's employment records, individuals in the Pet Stylists Settlement Class earned significantly more on average in gross compensation than members of the Non-Exempt Employee Settlement Class.

39. After the deduction of the amount allocated to the Waiting Time Penalties Settlement Sub-Class, the balance of the Net Distribution Amount, estimated to be approximately \$4,122,600.00 will be divided between the Pet Stylist Settlement Class and the Non-Exempt Employee Settlement Class with 2/3, or \$2,748,400, available for distribution to the Pet Stylist Settlement Class and 1/3, or \$1,374,200, available for distribution to the Non-Exempt Employee Settlement Class. Based on the data provided by PetSmart to Class Counsel in June 2013, the total number of individuals (current and former) in the Pet Stylist Settlement Class is approximately 2,068. Assuming 100% participation rate, the average Individual Settlement Amount for the Pet Stylist Settlement Class members would be approximately \$1,300.00. Additionally, based on the data provided by PetSmart to Class Counsel, the total number of individuals (current and former) in the Non-Exempt Employee Settlement Class is approximately 14,345. Again, assuming 100% claims participation rate, the average Individual Settlement Amount for the Non-Exempt Employee Settlement Class members would be approximately \$100.00. These averages will likely be higher because the participation rate will be lower and the redistributions will increase the average Individual Settlement Amounts. Realistically, however, there will be less than 100% participation rate, increasing the average amount, and the actual amount of Individual Settlement Amounts paid to Claimants will also be higher due to redistribution of the unclaimed funds.

40. Settlement Class Members who submit a timely and valid Claim Form will receive their

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Individual Settlement Amount To the extent that any member of the Non-Exempt Employee Settlement Class does not, for any reason, become a Claimant and there are unclaimed funds remaining of the one-third (1/3) portion of the Net Distribution Amount allocated to the Non-Exempt Employee Settlement Class, the Settlement Administrator shall first redistribute the unclaimed funds to the Claimants in the Non-Exempt Employee Settlement Class in proportion to each Claimant's Individual Settlement Amount. Notwithstanding the pro-rata increase, no Claimant shall be entitled to recover more than three times (3x) his or her original Individual Settlement Amount. In the event that the redistribution causes Claimants' Individual Settlement Amounts to be increased by more than three times (3x) his or her original Individual Settlement Amount, the Settlement Administrator shall then redistribute the remaining unclaimed funds to the Claimants in the Pet Stylist Settlement Class in proportion to each Claimant's Individual Settlement Amount. Notwithstanding the pro-rata increase, no Claimant shall be entitled to recover more than three times (3x) his or her original Individual Settlement Amount. In the event that the redistribution causes Claimants' Individual Settlement Amounts to be increased by more than three times (3x) his or her original Individual Settlement Amount, the remaining unclaimed funds shall first be used to pay PetSmart's share of any taxes owed pursuant to the Settlement. Any Net Distribution Amount remaining after the payment of employer taxes shall be paid to the Legal Aid Society – Employment Law Center ("ECL"), 180 Montgomery Street, Suite 600, San Francisco, CA 94104, the *cy pres* beneficiary jointly designated by the parties. (Settlement Agreement § IV, ¶ 4.5(c).)

41. The Legal Aid Society – Employment Law Center is an appropriate *cy pres* beneficiary under Code of Civil Procedure section 384(b) because it is a nonprofit organization that supports projects that will benefit employees similarly situated to Settlement Class Members consistent with the objectives and purposes of the underlying wage and hour causes of action in this case, and because it provides civil legal services to the indigent. ECL has several programs designed to protect the rights of low-income workers to work in a safe, respectful environment that is free from discrimination, and in compliance with the law. In particular, ECL runs a Wage and Hour Program that works to ensure that all workers benefit from laws that regulate pay and work hours through a number of methods, including representing individuals through litigation and administrative advocacy to enforce their wage and hour rights, running a Workers' Rights Clinic to provide assistance to low wage and indigent workers on their

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1 legal claims, and conducting public education and outreach for workers, community advocates, and legal
2 aid and pro bono attorneys.

3 **D. Content of Class Notice and Claim Form/FLSA Consent Form**

4 42. A copy of the proposed Notice of Class Action Settlement ("Class Notice") is attached
5 hereto as Exhibit 2. The Class Notice in this case is accurate and informative. The Class Notice informs
6 Settlement Class Members, in plain language, about the terms of the Settlement and explains the
7 payments to which they are entitled under the Settlement. It provides information on the meaning and
8 nature of the proposed Settlement, the terms and provisions of the Settlement, the relief the Settlement
9 will provide Settlement Class members, the amount of proposed service awards to the Class
10 Representatives, the amount of Class Counsel's request for reimbursement of costs and attorneys' fees
11 from the Settlement, the proposed cost of administration, the payment to the LWDA, the date, time and
12 place of the final approval hearing, and the procedure and deadlines for participating in and opting out of
13 the settlement, submitting Claim Forms, comments and objections to the Settlement, and how class
14 members can obtain additional information. The Class Notice clearly states that the Settlement does not
15 constitute an admission of liability by PetSmart, and recognizes that the Court has not ruled on the
16 merits of the action. It also states that the final settlement approval decision as yet to be made.

17 43. The Class Notice and the Claim Form are attached as Exhibits 2 and 3 to this Declaration.
18 The Claim Form informs, in plain language, Settlement Class Members and of the deadline to submit the
19 Claim Form. The Claim Form informs the Settlement Class members of the estimate amount of their
20 Individual Settlement Amount, the total amount of gross compensation they earned from PetSmart
21 during their employment and as a member of one of more of the Settlement Classes, and their dates of
22 employment in one or more of the Settlement Classes during the Covered Timeframe. It also informs
23 Settlement Class Members who wish to challenge the information provided on the Claim Form, the
24 procedure for submitting filing a dispute with the Settlement Administrator. The Claim Form also serves
25 as the FLSA Consent Form to opt into the Settlement for those Settlement Class Members who were
26 employed by PetSmart within the three year period prior to preliminary approval of the Settlement.
27 (Settlement Agreement § IV, ¶ 5.4.)

28 ///

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E. Administration of Notice, Objections, and Claims

44. The reasonable costs of settlement administration will be deducted from the Total Settlement Amount. The parties have selected Simpluris, to serve as the Settlement Administrator. Simpluris has provided the parties with a detailed estimate of the claims administration process, as described below, not to exceed \$105,000. Within fifteen business days of preliminary approval, PetSmart will provide Simpluris, the Settlement Administrator and Class Counsel with the names, addresses, social security numbers, phone numbers, and relevant employment dates for each Settlement Class Member. (Settlement Agreement § IV, ¶ 6.2.) PetSmart will indicate which Settlement Class Members worked as Pet Stylists and/or Salon Managers during the Covered Timeframe. As to those Class Members who received pay as Pet Stylists or Salon Managers as well as in a position(s) other than Pet Stylist or Salon Manager during the Covered Timeframe, PetSmart will provide the amount of gross (W-2) compensation paid to each such Settlement Class Member who worked: (1) as a Pet Stylist and/or Salon Manager, and (2) in a position(s) other than Pet Stylist or Salon Manager. The address, telephone number, wage and Social Security information will be kept completely confidential and will not be released or used for any purpose other than identifying Settlement Class Members and researching current contact information. (Settlement Agreement § IV, ¶ 6.2.)

45. Simpluris shall mail the Class Notice in the form approved by the Court, no later than twenty-five (25) days after the Court grants Preliminary Approval. (Settlement Agreement § IV, ¶ 6.3.) The Class Notice will include an explanation of the Settlement Class Member's right to be excluded from the Settlement Class by submitting a written request for exclusion. Attached to the Class Notice will be the Claim Form/FLSA Consent Form, in the form approved by the Court. Included with the Class Notice shall be a pre-paid, pre-addressed envelope for the Class Member to respond to the Claim Notice. For Settlement Class Members who according to the records provided by PetSmart are listed as former employees, Simpluris will undertake a reasonable address verification using Accurant to skip trace to ascertain the accuracy of the last known address. To the extent this process yields an updated address, that updated address shall replace the last known address and be treated as the last known address for purposes of Class Notice mailing. If a Settlement Class Member is known to be deceased, the Class Notice for that Settlement Class Member shall be mailed to the last known address (or updated

1 address, if applicable) of the legal representative of the deceased Settlement Class Member's estate, to
2 the extent known. (Settlement Agreement § IV, ¶ 6.4.)

3 46. With respect to those Settlement Class Members whose Notice is returned as
4 undeliverable, Simpluris will use Experian (or similar service) to obtain a current address and re-mail
5 the Notice within three business days of receipt of the returned Notice. (Settlement Agreement § VI, ¶
6 6.4.) Simpluris shall maintain a toll-free telephone line that shall be staffed and/or provide automated
7 Interactive Voice Response with the ability for Settlement Class Members to leave messages during
8 non-business hours. Simpluris shall also maintain an interactive website with the URL
9 www.petsmartsettlement.com that Settlement Class Members can use to file a Claim Form, track the
10 processing of a Claim Form, and contact the Settlement Administrator if they have questions.

11 (Settlement Agreement § VI, ¶ 6.5 – 6.6.)

12 47. Settlement checks that are returned a second time and settlement checks not cashed
13 within 180 days of issuance will not be re-issued. If a Claimant does not cash or deposit his or her check
14 within 180 days from the date of issuance, or if a settlement check is returned for a second time, the
15 Settlement Administrator shall cause that Claimant's payment to be sent to the California State
16 Controller's office to be placed in the Unclaimed Properly Fund for the benefit of the Claimant.
17 (Settlement Agreement § VI, ¶ 7.5.)

18 **F. Release of Claims**

19 48. Settlement Class Members who submit a Claim Form/FLSA Consent Form and do not
20 opt out will release wage-and-hour claims against PetSmart, with the exception that Plaintiffs may
21 continue to pursue their individual claims as stated in Plaintiffs' Complaint for wrongful termination in
22 violation of public policy, failure to accommodate and failure to engage in the interactive process under
23 the Fair Employment and Housing Act. Specifically, each member of the Settlement Class (other than
24 opt-outs), regardless of whether he or she has timely submitted a Claim Form, will fully release and
25 discharge PetSmart, including its former and present parent companies, subsidiaries, divisions, concepts,
26 related or affiliated companies, shareholders, officers, directors, employees, partners, agents,
27 representatives, attorneys, insurers, successors and assigns, and any individual or entity that could be
28 jointly liable with any of the foregoing ("Released Parties") from any claims, causes of action, damages,

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1 wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and
2 any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or
3 unknown, suspected or unsuspected, arising from: (1) the Action and any claims arising out of, or
4 related to the actual claims asserted or factual allegations in the Action including all claims made under
5 the California Labor Code, Industrial Welfare Commission Wage Orders, and the California Business
6 and Professions Code, claims under PAGA, claims for restitution and other equitable relief, liquidated
7 damages, punitive damages, waiting time penalties, penalties of any nature whatsoever, other
8 compensation or benefits; and (2) any alleged wage and hour violations that were made or could have
9 been made based on the actual claims asserted or factual allegations in the Action, whether premised on
10 statute, contract, tort or other theory of liability under state or local law, by any Class Member against
11 the Released Parties (collectively, the "Released Claims"), and including, but not limited to, any claims
12 specifically referenced herein. In addition, any Class Member who timely submits a Claim Form will
13 fully and forever release and discharge the Released Parties from any claims arising out of, or related to
14 the actual claims asserted or factual allegations in the Action including all claims made under the Fair
15 Labor Standards Act ("FLSA") and any alleged federal wage and hour violations/allegations that were
16 made or could have been made based on the actual claims asserted or factual allegations in the Action,
17 whether premised on statute, regulation contract, tort or other theory of liability under federal law or
18 regulation by any Class Member against the Released Parties (collectively, the "FLSA Released
19 Claims"). The release will include any claims arising from or that may have arisen from the Parties'
20 respective prosecution and/or defense of this litigation. The release will apply to the Covered Time
21 Frame and include any cause of action alleged in or which could have been alleged based on the facts in
22 the Complaint or any Amended Complaint that may be filed prior to the approval of this Settlement. All
23 Released Claims are released for all Class Members regardless of whether they submit a Claim Form or
24 receive any payment under the Settlement unless they Opt-Out of the Settlement, and all FLSA Released
25 Claims are released for all Class Members who timely submit a Claim Form, regardless of whether they
26 receive any payment under the Settlement. The Released Claims and FLSA Released Claims do not
27 include claims for workers' compensation benefits or any of the claims that may not be released by law.
28 The four Plaintiffs will execute a general release of all known and unknown claims each may have

1 against PetSmart, with the exception that Plaintiffs may continue to pursue their individual claims as
 2 stated in Plaintiffs' Complaint. Settlement Class Members will have the opportunity to object to, and opt
 3 out of the Settlement, as well as challenge the total amount of gross compensation paid to them PetSmart
 4 during the Covered Timeframe. (Settlement Agreement § VI, ¶ 6.7 – 6.10.)

5 **G. Other Settlement Considerations**

6 49. The Settlement falls well within the range of reasonableness, given that it results in a
 7 substantial benefit to all Settlement Class Members – up to \$10,000,000. As detailed above, the
 8 Settlement provides meaningful relief for the vigorously disputed wage and hour violations and related
 9 claims that make it well within the range of reasonableness.

10 50. In reaching the Settlement, counsel on both sides relied on their respective substantial
 11 litigation experience in similar employment class action, and thorough analysis of the legal and factual
 12 issues presented in this case.

13 51. Plaintiffs faced numerous risks in further judicial proceedings. Plaintiffs' claim on behalf
 14 of Pet Stylists for unpaid wages for non-productive time was a relatively novel claim at the time this
 15 case was filed. In fact, PetSmart zealously argued that Pet Stylists were paid a commission as opposed to
 16 piece rate and that PetSmart's commission pay structure was legal under California law. The largest
 17 dispute between the parties was with respect to the duties Plaintiffs claimed were non-productive duties
 18 for which they did not receive any compensation. The alleged non-productive duties included duties
 19 such as contacting customers, filling out customer paperwork, checking dogs in and out before and after
 20 appointments, stocking and facing product on store shelves, assisting in other departments throughout
 21 the store, taking inventory, cleaning the grooming salon, and prospecting for new grooming customers.
 22 PetSmart maintains that many of these duties are incidental to performing grooming services for which
 23 Pet Stylists' compensation plan pays at the rate of 50% of the net sale price the customer pays for each
 24 grooming service.

25 52. In preparation for mediation, Plaintiffs' counsel performed extensive damages analysis
 26 on the data obtained from PetSmart to calculate an estimated amount of damages for Plaintiffs' claims.
 27 Plaintiffs' damages for the unpaid wages claim was estimated using the anecdotal evidence obtained
 28 from class member interviews as well as the Commission Reports produced by PetSmart prior to the

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mediation. Based on this information, Plaintiffs estimated an average number of non-productive hours per shift that wages were owed. Plaintiffs argued that the non-productive time should be compensated at the average hourly fall back rate paid to Pet Stylists. PetSmart argued that the average number of non-productive time was minimal, and none at all in workweeks in which Pet Stylists do not commission out, and that average rate of pay should be minimum wage as opposed to the average hourly rate. Assuming one hour of non-productive time per shift at minimum wage during the Covered Timeframe, the maximum value of Plaintiffs' claim for unpaid wages would be approximately \$9,700,000. However, this amount assumes that Pet Stylists are owed unpaid wages for non-productive time for 100% of the workweeks, which is not the case because in some workweeks Pet Stylists did not commission out, and were therefore paid for all hours at their fall back rate.

53. Plaintiffs allege that in workweeks in which Pet Stylists commissioned out, they did not get paid rest breaks because PetSmart only paid piece rate compensation during such workweeks and did not pay any wages for time spent taking rest breaks. PetSmart's written rest break policy provides for 15-minutes rest breaks. Plaintiffs therefore argued that Pet Stylists were contractually entitled to 15-minute rest breaks. PetSmart argued that if it owed any unpaid wages for unpaid rest breaks, the amount owed should be calculated at minimum wage and for the statutorily required 10-minute rest break. Assuming 30-minutes of unpaid wages for rest break time per shift at minimum wage, the maximum value of this claim is \$4,800,000. This maximum amount assumes that rest break wages are owed for 100% of the shifts. However, in workweeks in which Pet Stylists did not commission out and were paid their hourly fall back rate, they would not be owed any additional wages for rest break wages.

54. To calculate vacation wages owed for Pet Stylists, PetSmart uses an average of the total amount piece rate compensation paid for the prior 26 weeks. Because Pet Stylists are not paid any wages for non-productive time, the average pay for the prior 26 weeks is underpaid. Plaintiffs' estimated value for the vacation wages for Pet Stylists is between \$600,000 - \$700,000.

55. Plaintiffs' claim for meal and rest break violations on behalf of both classes was premised on PetSmart's illegal written meal and rest break policy, which was in effect from 2005 through April 2011. To calculate the value of these claims, Plaintiffs limited the meal premium claim to shifts between 5 – 6 hours and the rest premium claim to shifts between 3.5 – 4 hours for both the Pet Stylist Settlement

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1 Class and the Non-Exempt Employee Class. Assuming Plaintiffs prevailed on this claim and PetSmart's
2 policy was found to be illegal, the estimated maximum value of meal premiums owed to Pet Stylists
3 assuming one meal premium for each shift from 2008 – April 2011 at the rate of minimum wage would
4 be approximately \$1,178,000. The maximum amount of meal premiums owed to Non-Exempt
5 Employees other than Pet Stylists is approximately \$8,100,000. PetSmart vehemently defended against
6 this claim arguing that the written policy was not enforced and that all non-exempt employees, including
7 Pet Stylists, were all verbally informed that they were entitled to a meal break after the fifth hour of
8 work. An additional defense against the meal break claim was that employees can waive meal periods
9 on shifts less than 6 hours. The maximum value of the claim for rest break premiums for Pet Stylists
10 assuming one rest break premium per shift at minimum wage is \$9,700,000. The claim for rest break
11 premiums on behalf of the Pet Stylists was not limited to the period 2008 – April 2011 because Plaintiffs
12 allege that Pet Stylists were denied compliant rest breaks throughout the entire class period, May 2008 -
13 present. The maximum value of the rest break claim for Non-Exempt Employees other than Pet Stylists
14 is approximately \$906,000. This amount was limited to 2008 – April 2011 because it was based on
15 PetSmart's allegedly illegal written rest break policy, which was revised in April 2011.

16 56. Plaintiffs' off-the-clock claim was premised on the theory that Pet Stylists and other Non-
17 Exempt Employees would clock out at the front of the store and then walk through the store to the break
18 room while clocked out, which would inevitable result in being interrupted by customers at times,
19 although not every shift and not every time they were clocked out. Plaintiffs allege that PetSmart did not
20 have a method for paying these employees for work performed off-the-clock. (PetSmart defended this
21 claim by arguing that it did in fact allow employees who had to assist customers while off-the-clock to
22 inform their store manager and get paid or to extend their break time to ensure they received a full meal
23 or rest break. Plaintiffs estimated the value of the off-the-clock claim for Pet Stylists to be
24 approximately \$971,000 and for the Non-Exempt Employee Settlement Class to be approximately
25 \$2,795,000. Lastly, the tool claim on behalf of the Pet Stylist Settlement Class was estimated to be
26 approximately \$1,500,000. Plaintiffs recognized the difficulties and risks moving forward with class
27 certification of the off-the-clock claim. Additionally, the time spent working off-the-clock was minimal
28 and the majority of the value of this claim comes from the wages owed to former employees in the form

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1 of a waiting time penalty.

2 57. PetSmart denies that it failed to pay all wages due for all hours worked under California
3 law. Moreover, PetSmart hotly contested the average number of unpaid non-productive hours that
4 Plaintiffs estimated were worked by Pet Stylists per shift. Plaintiffs faced additional difficulties in
5 continued litigation because the number of non-productive time was not recorded. In fact, Pet Stylists
6 often groom multiple dogs simultaneously, making it very difficult to accurately estimate the average
7 non-productive time. Plaintiffs faced additional risk in continued litigation in that the duties Plaintiffs
8 believe are non-productive duties would in fact be found by a Court to be duties which are incidental to
9 grooming and therefore covered by the piece rate compensation paid by PetSmart for performing
10 grooming services. Additionally, PetSmart vehemently denies that non-exempt employees worked off-
11 the-clock because they were interrupted by customers. PetSmart also disputed Plaintiffs' use of the
12 average hourly rate for the alleged violations. PetSmart also raised a number of factual issues it argued
13 would show substantial variation as to how employees spend their time and the duties performed at each
14 store, which could present substantial risks at the class certification stage. Finally, PetSmart claims its
15 compensation scheme is legal because in workweeks in which Pet Stylists are paid their hourly fall back
16 rate because they haven't commissioned out, they are paid for all hours worked. Plaintiffs do not dispute
17 that Pet Stylists are paid for all hours worked during workweeks when they are paid the fall back rate.
18 However, in workweeks in which Pet Stylists commission out and earn only their piece rate
19 compensation, Plaintiffs allege that Pet Stylists are not paid any wages for time spent performing non-
20 productive duties and time spent taking rest breaks.

21 58. During the course of Plaintiffs' investigation and review of the employment data
22 provided by PetSmart, Plaintiffs learned that the manner in which PetSmart calculates vacation wages
23 for Pet Stylists was inaccurate and vacation wages were underpaid. PetSmart uses an average of the total
24 amount piece rate compensation paid to each Pet Stylist for the past 26 weeks of their employment to
25 calculate an average rate per hour for each vacation hour owed. Because Pet Stylists are not paid any
26 wages for non-productive time, Plaintiffs allege that the average pay for the 26 week period used to
27 calculate vacation wages is underpaid. The parties agreed to mediate the vacation claim and this claim
28 was included in this Settlement. Class Counsel estimated the total amount of unpaid vacation wages

1 owed to the Pet Stylist Settlement Class during the Covered Timeframe to between \$600,000 -
2 \$700,000.

3 59. Given all of these contested issues, Class Counsel's assessment of the litigation risks
4 Plaintiffs faced, and the time value of money (due to the time required to take this case to trial and
5 through appeal), Plaintiffs agreed to compromise and settle the claims of the Settlement Classes as
6 described in the Settlement Agreement. Additionally, given the novel nature of Plaintiffs' primary claim
7 for unpaid wages and the uncertainty regarding the state of the law concerning piece rate and
8 commission pay structures, Plaintiffs' claim for unpaid wages could have been significantly discounted
9 by a jury. All of these issues required Plaintiffs to compromise their original demands, where were
10 calculated based on the maximum exposure PetSmart faced if Plaintiffs prevailed on everything.

11 60. While the parties have disagreed over the scope of PetSmart's exposure to the alleged
12 claims as well as the merits of the claims themselves, counsel for both parties agree that the settlement
13 reach is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in
14 light of all known facts and circumstances, including the risk of significant delay and defenses asserted
15 by PetSmart.

16 61. The Settlement commits PetSmart to a Total Settlement Amount of \$10,000,000.00 to
17 compensate Settlement Class Members for their alleged damages, which is expected to result in a
18 significant recovery for each Claimant. Based on the information available to Class Counsel presently, it
19 is estimated that the average Individual Settlement Amount to be approximately \$1,300.00 for members
20 of the Pet Stylist Settlement Class and approximately \$100.00.00 for members of the Non-Exempt
21 Employee Settlement Class. These estimates of the average amounts are based on a 100% claims rate,
22 which is highly unlikely in this type of case. Also, these estimates do not account for variations in
23 compensation paid by PetSmart to the Claimants or for any amounts that may be redistributed to
24 Claimants. In addition, any member of the Pet Stylist Settlement Class who is also a member of the
25 Waiting Time Penalties Settlement Sub-Class will receive an additional \$400 and any member of the
26 Non-Exempt Employee Settlement Class who is also a member of the Waiting Time Penalties
27 Settlement Sub-Class will receive an additional \$200. In contrast, continued litigation would be costly
28 and time consuming, and appeal from any judgment would be likely. Such efforts would likely result in

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1 a delay of years before this case would finally be resolved. This Settlement provides a significant and
2 timely recovery to the Settlement Class and easily falls within the range of reasonableness. The
3 estimated average Individual Settlement Amounts to be recovered by Claimants in this case are, in my
4 experience, very favorable for a case of this type.

5 62. In addition to the monetary results achieved by Plaintiffs by this Settlement, PetSmart has
6 agreed to provide grooming tools for its in-store salons to be used by Pet Stylists. As part of this
7 Settlement, PetSmart retained a safety and ergonomic consultant to conduct an ergonomic evaluation of
8 PetSmart's practices and to review PetSmart's policies and procedures with regard to whether Pet
9 Stylists are allowed to sit while performing grooming tasks.

10 63. The settlement of the claim for penalties under the Private Attorneys General Act
11 ("PAGA") for \$50,000.00, or 0.50% of the Total Settlement Amount, is reasonable under the
12 circumstances. The parties negotiated a good faith amount for PAGA penalties, and this amount was not
13 the result of self-interest at the expense of the Settlement Class Members. Of this amount, 75%
14 (\$37,500) will be paid to the LWDA, and 25% (\$12,500) will be distributed to Claimants in addition to
15 their pro rate settlement shares.

16 64. The Plaintiffs, in the settlement of this wage and hour class action, are entitled to
17 payment of attorney's fees and costs. An attorney's fee award is justified where the legal action has
18 produced its benefits by way of a voluntary settlement. Normally, courts make the determination as to
19 the fee and costs award contemporaneously with the motion for final settlement approval. Plaintiffs will
20 fully brief the fee application at that time and support their application with appropriate factual showing
21 by declaration.

22 65. Here, upon final approval of the Settlement, Plaintiffs will seek an award of Class
23 Counsel's attorney's fees under the common fund doctrine, which is customarily used in awarding fees
24 and costs in settlements of wage and hour class actions and, as indicated in the Memorandum filed
25 herewith, is an approved method under California case law.

26 66. Under the Settlement, Class Counsel may seek a total award of attorneys' fees and costs
27 of up to 33-1/3% of the Total Settlement Amount of \$10,000,000. Based on my experience and
28 knowledge of the relevant legal market for wage and hour class actions, this amount accurately reflects

1 the marketplace for representation of plaintiffs in wage and hour cases of this type on a contingency
2 basis.

3 67. Class Counsel has incurred expenses for items such as filing fees, mediation fees, travel,
4 postage, delivery, online research, telephone, and copying, in excess of \$40,000.00. These are
5 categories of expenses for which Class Counsel and other law firms customarily charges its fee-paying
6 clients. A detailed summary of the costs incurred will be supplied at the time of the final approval
7 hearing.

8 68. I believe that, under the circumstances, the fee and cost award requested by Plaintiffs is
9 appropriate and should be preliminarily approved as fair and reasonable, subject to the Court's final
10 determination at the time of final approval.

11 69. Plaintiffs have proposed that the Class Representatives receive service awards in the
12 amount of \$10,000 each to Plaintiff Alanna Harrison and Plaintiff Alisa Valdez and \$5,000 each to
13 Plaintiff Danette Moore and Plaintiff Latresa Myers. The service awards shall be in addition to the
14 payment they may otherwise receive as a Settlement Class Member. Such service awards are routinely
15 made in wage and hour class actions like this case. Plaintiffs provided significant assistance to counsel
16 to investigate and litigate this case. They initiated this action by seeking legal assistance from Class
17 Counsel, assisted with the preparation of the complaint, provided documents, identified potential
18 witnesses, and worked closely with Class Counsel throughout the case. Plaintiffs each attended their
19 deposition in San Francisco as well as the mediation, in some cases having to take time off from work
20 and drive several hours to do so. Each Plaintiff reviewed and executed the Settlement Agreement and
21 provided a declaration in support of preliminary approval of the Settlement. It is my belief that no action
22 would have been taken by class members individually, and no compensation would have been recovered
23 for them at all, but for the representative Plaintiffs' actions on their behalf. Class Representatives, in
24 agreeing to bring this action, formally agreed to accept the responsibilities of representing the interests
25 of all class members, and to assume risks and potential costs that other class members were not subject
26 to in this case. In addition, by actively pursuing this action, Class Representatives also furthered the twin
27 California public policy goals of enforcing the overtime laws and making appropriate use of the class
28 action device. Additionally, the Plaintiffs agreed to postpone settlement negotiations related to their

1 individual FEHA claims until the resolution of the class and representative action claims.

2 70. Moreover, PetSmart does not oppose payment of a total of \$30,000 for the service awards
3 to the Class Representatives. Accordingly, the payments to the Class Representatives are appropriate
4 and justified as part of the overall Settlement.

5 71. In conclusion, it is my opinion, that this Settlement Agreement is fair, reasonable and
6 adequate, and in the best interest of the class. The settlement amount of \$10,000,000 is an excellent
7 result, considering the formidable arguments PetSmart advanced against class certification, liability, and
8 damages. Difficult issues remained as to class-wide proof of the number of unpaid non-productive
9 hours, meal and rest period violations, miscalculated vacation pay, unreimbursed tool expenses , and the
10 willfulness and intent elements of the waiting time penalties and inaccurate wage statement claims. In
11 light of these issues, and the fact that the settlement was the product of protracted, contentious, and
12 arm's length negotiation before an experienced mediator, Class Counsel believes that the settlement
13 should be preliminarily approved, notice be disseminated to the Settlement Class Members, and a final
14 approval hearing be scheduled.

15 I declare under penalty of perjury under the laws of the State of California and the United States
16 that the foregoing is true and correct.

17 Executed this 31st day of January, 2014, in San Diego, California.

18 Respectfully submitted,

20 Dated: January 31, 2014

GRAHAMHOLLIS APC

22 By: /s/ Graham S.P. Hollis
23 Graham S.P. Hollis, Esq.
24 Email: ghollis@grahamhollis.com
25 Marta Manus, Esq.
26 Email: mmanus@grahamhollis.com
27 Attorneys for Plaintiffs
28

EXHIBIT B

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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

13 DANETTE M. MOORE, LATRESA MYERS,
14 ALANNA HARRISON and ALISA VALDEZ
15 individually and on behalf of others similarly
16 situated,

17 Plaintiffs,

18 v.

19 PETSMART, INC, and Does 1 through 100,
20 inclusive,

21 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF GRAHAM S.P. HOLLIS
IN SUPPORT OF PLAINTIFFS'
SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 3, 2014
Time: 1:30 p.m.
Courtroom: 4 –5th Floor
Judge: Hon. Edward J. Davila

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1 I, Graham S.P. Hollis, state and declare:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am a partner with the law firm of GrahamHollis, A.P.C. ("GrahamHollis") in San Diego, California. I
4 am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. If called as
5 a witness, I could and would competently testify thereto.

6 2. I have been a member of the State Bar of California since 1985. I am also admitted to
7 practice in various Districts of United States District Court. I have personally tried many bench and jury
8 trials to verdict in various courts in California. I have represented employees and employers in
9 employment litigation matters since 1995. My involvement in various forms of class action litigation
10 spans more than twenty years.

11 3. My law firm, GrahamHollis and my associate Marta Manus are the attorneys of record
12 for Plaintiffs Danette Moore, Latresa Meyers, Alanna Harrison, and Alisa Valdez (collectively
13 "Plaintiffs"). I submit this declaration in support of Plaintiffs' Supplemental Brief in Support of
14 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

15 4. On January 31, 2014, Plaintiffs' filed their Motion for Preliminary Approval of Class
16 Action Settlement, requesting approval of the settlement reached by the parties.

17 5. On March 7, 2014, the parties attended the hearing on Plaintiffs' Motion for Preliminary
18 Approval, at which time this Court requested that the parties submit supplemental briefing clarifying
19 specific provisions of the Joint Stipulation of Class Action Settlement and Release ("Settlement
20 Agreement"). Specifically, the Court asked the parties to provide supplemental briefing addressing the
21 following: (1) the provision in the Settlement Agreement that any amount not awarded by the Court to
22 class counsel for attorney's fees will be retained by Defendant and will not increase the amount
23 available for distribution to the settlement class members; (2) a lodestar cross-check of class counsel's
24 requested attorney's fees; (4) the sampling methodology utilized for the valuation of the Plaintiffs'
25 claims and allocation of settlement funds among the settlement classes; and (4) the reasonableness of the
26 amount of the incentive awards requested by each of the four Plaintiffs.

27 6. On April 9, 2013, the parties engaged in mediation with mediator Jeffrey Ross. Although
28 the parties were unable to reach a settlement agreement on the day of the mediation, the parties

1 continued their settlement negotiations through mediator Jeffrey Ross and ultimately, on May 15, 2013,
 2 accepted the mediator's proposal, reaching the settlement on the terms for which they now seek
 3 preliminary approval. The parties devoted substantial time and effort to reaching a proposed settlement.
 4 At all times, the negotiations were conducted at arms' length and through the mediator. The fee
 5 discussions were handled separately and after the discussion of substantive relief that PetSmart agreed to
 6 pay to the settlement class. The mediator proposed a 33 1/3% amount for attorney's fees after mediating
 7 the case extensively. The mediator also made a mediator's proposal that because the fees were
 8 negotiated separately that in the event that less than the full amount of fees be awarded that the un-
 9 awarded portion revert back to the defendant.

10 7. PetSmart has committed to paying the Net Distribution Amount of \$6,494,000, none of
 11 which will revert to PetSmart because any unclaimed funds will be redistributed to the participating
 12 settlement class members, not to exceed three times their original claim amount, with the remaining
 13 unclaimed funds distributed to the *cy pres* beneficiary mutually designated by the parties.

14 8. Plaintiffs' claim for unpaid minimum wages for non-productive time, comprising the
 15 majority of the value of the claims in this case, is a very challenging claim to prove given the fact that
 16 PetSmart does not require groomers to record the start and end times of each grooming job, making it
 17 very difficult to estimate the average amount of time spent on non-grooming tasks (i.e. non-productive
 18 time).

19 9. In December 2008, the United States District Court for the Eastern District granted final
 20 approval in *Sorenson, et al v. PetSmart, Inc.* (E.D. Cal. Case No.: 2:06-cv-02674-JAM-DAD)
 21 ("*Sorenson* lawsuit"). The *Sorenson* lawsuit alleged wage and hour violations involving the same Labor
 22 Code provisions as in the instant case, including violations of California Labor Code section 226.7 for
 23 failure to provide meal and rest breaks and derivative claims for Labor Code sections 203, and 226. The
 24 *Sorenson* lawsuit settled for a reversionary maximum settlement amount of \$1,950,000 on behalf of two
 25 sub-classes, Groomers and Non-Groomers, with a total of 21,813 class members. The settlement was
 26 allocated between the two sub-classes, with 62% of the net settlement sum allocated to the Groomer
 27 Class and 38% allocated to the Non-Groomer Class based on the respective valuation of the claims of
 28 the sub-classes. The Court approved the settlement, awarding class counsel \$585,000 (30% of maximum

1 settlement amount), and an incentive award to the named Plaintiff of \$15,000. Because the amount of
 2 any unclaimed funds reverted to PetSmart and the settlement had a minimum distribution of 60% of the
 3 net settlement fund, the total payout to the two sub-classes was \$747,000, with \$463,140 distributed to
 4 the Groomer sub-class, and \$283,860 distributed to the Non-Groomer sub-class, with a total of 4,442
 5 claims paid.

6 10. In April 2009, the United States District Court for the Eastern District granted final
 7 approval of another settlement reached by PetSmart in *Enabnit, et al. v. PetSmart, Inc.* (E.D. Cal. Case
 8 No.: 2:07-cv-00165-JAM-DAD) ("*Enabnit* lawsuit"). The *Enabnit* lawsuit alleged various wage and
 9 hour violations on behalf of three sub-classes including "commissioned salon employees" (i.e.
 10 groomers) for various Labor Code violations including a claim for failure to pay minimum wages and
 11 failure to provide reimbursement for grooming tools to commissioned salon employees. The *Enabnit*
 12 lawsuit also settled for a reversionary maximum settlement amount of \$1,950,000 on behalf of three
 13 sub-classes, "employees without direct deposit" (sub-class A), "commissioned salon employees" (sub-
 14 class B), and "salon employees" (sub-class C), with total of 20,455 class members. Because the amount
 15 of any unclaimed funds reverted to PetSmart, the total payout to the three sub-classes was \$369,665,
 16 with a total of 1,790 claims paid. The Court approved the settlement, awarding class counsel \$570,000
 17 (29.23% of the max settlement amount), and an incentive award to the named Plaintiff of \$30,000. The
 18 *Enabnit* lawsuit alleged a minimum wage claim and a tool claim on behalf of sub-class B, the
 19 commissioned salon employees, nearly identical to the Moore allegations. The result of the *Enabnit*
 20 lawsuit was that PetSmart's groomer employees released their minimum wage claim through December
 21 1, 2008. Because there were overlapping classes in *Sorenson* and *Enabnit*, the *Enabnit* settlement
 22 agreement specifically excluded claims that were being litigated in the first-filed *Sorenson* action.

23 11. Although the *Sorenson* settlement released Labor Code § 203 claims for waiting time
 24 penalties, it did not award the former employees, the only employees entitled to a waiting time penalty,
 25 any additional monetary recovery. In contrast, the settlement in this case specifically includes a Waiting
 26 Times Penalties Settlement Sub-Class, the members of which will receive an additional monetary
 27 recovery of either \$200 or \$400 depending on whether they are a part of the Pet Stylist Settlement Class
 28 or Non-Exempt Employee Settlement Class, in addition to the monetary recovery they receive for their

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1 claim. On an individual basis, members of the Pet Stylist Settlement Class who are also members of the
2 Waiting Time Penalties Settlement Sub-Class will receive a greater amount (\$400 per individual) as a
3 waiting time penalty because, according the PetSmart's employment records, individuals in the Pet
4 Stylists Settlement Class earned significantly more on average in gross compensation than members of
5 the Non-Exempt Employee Settlement Class.

6 12. Both the *Sorenson* and *Enabnit* settlements were distributed on a workweek basis,
7 whereas the Moore settlement will be distributed based on class members' W-2 income. The parties
8 agreed that it is more equitable to use gross compensation earned instead of the number of workweeks
9 worked to calculate Individual Settlement Amounts. A detailed analysis of PetSmart's payroll records
10 revealed that there was a wide range of hourly rates earned by the Petsmart employees, particularly
11 among groomers. Additionally, many employees worked part-time. Based on our investigation, we
12 determined that those employees who worked more hours were more likely to suffer more unpaid time.
13 Also the higher the hourly rate for an employee that suffers unpaid time, the greater will be the amount
14 of money owed to the particular employee. If the class members were paid from the settlement based on
15 workweeks this might result in an inequitable distribution of the settlement. Employees who worked
16 fewer hours per week or were paid less might be paid the same amount per work weeks there coworkers
17 who had more unpaid time or lost more because their hourly rate was higher. By paying the class
18 members according to their relative W-2 income during the class period the allocation is much more
19 likely to be fair.

20 13. The settlement also provides additional value in the form of forward-looking relief
21 because, as a direct result of this settlement, PetSmart has revised its compensation policy for
22 commissioned Pet Stylist employees and as of January 2014, PetSmart pays these employees a
23 commission *and* an hourly rate as opposed to a commission *or* an hourly rate. Additionally, PetSmart
24 has agreed to provide grooming tools for its in-store salons to be used by Pet Stylists. As part of this
25 Settlement, PetSmart retained a safety and ergonomic consultant to conduct an ergonomic evaluation of
26 PetSmart's practices and to review PetSmart's policies and procedures with regard to whether Pet
27 Stylists are allowed to sit while performing grooming tasks.

28 14. Although I believe the appropriate method of calculating the fees award is the

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percentage-of-the-fund method, the Court has requested that Plaintiffs provide the Court with their lodestar to cross-check the reasonableness of the requested fees. To date, my firm's lodestar is approximately \$1,145,000.00 and the lawyers and paralegals in my firm have spent approximately 2,531 hours litigating this case. All of the time is recorded contemporaneously and billed in increments of tenths of an hour. I have supervised the work on the case. I have practiced law in California since 1985 and my practice is almost exclusively devoted to handling wage and hour class action litigation. My hourly rate is \$690.00 which I believe is reasonable given my experience and the nature of the work involved. The primary handling associate assigned to the file is Marta Manus who has practiced law in California since 2008. Her hourly rate is \$460.00. Two experienced paralegals have performed the majority of the paralegal work on the case and their hourly rate is \$215.00. I will provide the court with a detailed summary breakdown of the work performed based on the various tasks and time spent litigating the case at the time I submit a motion for attorney's fees.

15. There are significant risks of continued litigation here. Defendant is represented by an experienced and well-resourced defense firm. Defendant has severable viable defenses to liability and Plaintiffs are confident that Defendant is ready, willing, and able to vigorously defend this case in the event that the settlement is not approved. Absent the settlement, Plaintiffs would face challenging hurdles both factually and legally. At the time the settlement was reached, the law in this area was sparse and the outcome of any litigation was far from clear. The legal uncertainty at the time this settlement was reached with respect to the whether commissioned employees are entitled to be paid wages for non-productive time favors settlement of the instant action.

16. Although the parties agreed to postpone serving responses to formal discovery requests, the parties engaged in extensive relevant discovery prior to mediation. In addition to the documents and information exchanged, a total of six depositions between the parties were taken. Plaintiffs' estimate of the maximum loss to the class was based on hard data obtained from paper and electronically stored records produced by Defendant. Plaintiffs' counsel reviewed several thousands of pages of employment records and data produced by Defendant, interviewed dozens of class members, and took the depositions of two of Defendant's corporate representatives and designated persons most knowledgeable. Defendant took the depositions of the four plaintiffs, compiled and produced thousands of pages of documents and

1 electronic data, reviewed documents produced by Plaintiffs, and retained an outside consultant to
2 perform an analysis of the seating requirements in PetSmart's California stores.

3 17. The parties agreed that 10% of the locations (selected randomly by Excel randomizer
4 program) would provide an adequate sample for purposes of mediation. PetSmart produced
5 employment data and documents for non-exempt employees from 14 stores of its 132 California stores,
6 a 10.6% sample. PetSmart produced in excess of 33,000 pages of documents as well as electronic
7 personnel and payroll data regarding PetSmart's employees. Plaintiffs spent many hours analyzing this
8 information and data. PetSmart provided Plaintiffs with the names and contact information of all current
9 and former non-exempt employees employed at the 14 sample stores. Plaintiffs' counsel interviewed
10 current and former employees from 19 the following California PetSmart locations, 14.4% of the stores.

11 18. We sampled electronic timekeeping records for a total of approximately 251 Pet Stylists
12 and approximately 1,243 Non-Exempt Employees other than Pet Stylists. To determine the estimated
13 damages owed for Plaintiffs' meal and rest period claim, we used the timekeeping records to count the
14 number of shifts between 3.5 hours – 4 hours in length and the number of shifts between 5 hours – 6
15 hours in order to determine the number of qualifying shifts with violations. We then extrapolated the
16 number of shifts qualifying for a meal break or a rest break premium over the course of the liability
17 period for the meal break and rest break claims, December 2008 – April 2011 (date when PetSmart
18 revised its written meal and rest break policy). Plaintiffs' estimated damages for meal premiums owed
19 to the Pet Stylists Class is approximately \$1,178,000. The estimated damages for meal premiums owed
20 to the Non-Exempt Employee Class members is approximately \$8,100,000. Plaintiffs' estimated
21 damages for the rest premiums owed to the Pet Stylist Class is approximately \$9,700,000. The estimated
22 amount owed for rest break premiums to the Non-Exempt Employee Class is approximately \$906,000.

23 19. Plaintiffs' damages for the unpaid wages for non-productive time claim was estimated
24 using the information obtained from class member interviews as well as the commission reports
25 produced by PetSmart. In order to estimate the damages for unpaid wages for non-productive time for
26 the Pet Stylist Class, we reviewed approximately 6,000 pages of paper commission reports (the
27 commission reports list the name of each pet groomed on each day by each groomer) to locate the
28 commission reports for Pet Stylist employees. Using this information in conjunction with the

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timekeeping records allowed us to obtain an average amount of unpaid non-productive time per shift. Given the difficulties in evaluating this claim due to the fact that groomers do not record the start and end times of each groom job, we estimated one hour of non-productive time per shift at minimum wage. The estimated value of the unpaid minimum wages claim is approximately \$9,700,000. However, this amount assumed that Pet Stylists are owed unpaid wages for non-productive time for 100% of the workweeks, which is not the case because in some workweeks Pet Stylists did not “commission out,” in which case they were paid for all hours worked and would not be entitled to any additional wages.

20. The valuation of the damages for the unpaid off-the-clock time was estimated based on anecdotal evidence provided by class member interviews to obtain an average number of times per week that employees had to work off-the-clock while on breaks. We took the average amount of time worked off-the-clock per week and multiplied it by the actual number of workweeks worked according to the timekeeping records from the sample to obtain a total number of hours per workweek worked off-the-clock. The estimated value of the off-the-clock claim for Pet Stylists is approximately \$971,000 and approximately \$2,795,000 for the Non-Exempt Employees.

21. Plaintiffs’ tool claim on behalf of the Pet Stylists was estimated based on information obtained from class members as to the cost of the tool kit (approximately \$500) and regularly purchased grooming tools as well as receipts from Plaintiffs showing the amount of money they spent on grooming tools throughout a year, which was then estimated to obtain an average amount of monthly recurring expenses for grooming tools. The estimated value of tool claim is approximately \$1,500,000.

22. The apportionment of the Net Distribution Amount is based on the estimated damages for the members of the Pet Stylist Class accounting for approximately 2/3 of the total damages and the damages for the Non-Exempt Employee Class accounting for the other 1/3. Two-thirds of the total damages are going to be paid to the Pet Stylist Class, which has significantly less employees than the Non-Exempt Employee Class. Therefore, on an individual basis, the Pet Stylist will receive much larger individual payment amounts

23. I believe the incentive awards in the amounts of \$5,000 each to Moore and Myers and \$10,000 each to Harrison and Valdez, are well-deserved. The Plaintiffs have spent a great deal of time and effort in assisting me and my associate with the litigation of this case. They maintain regular

1 contact with us and are easily reachable for assistance and information. All four Plaintiffs were deposed
2 and had to travel to Oakland for the mediation and San Francisco for their depositions. Harrison and
3 Valdez were both current employees of PetSmart at the San Leandro store when this lawsuit was filed in
4 May 2012. They genuinely and realistically feared workplace retaliation because they were filing a
5 lawsuit against their current employer. In July 2012, the online forum Law360 published an article
6 about the lawsuit identifying all four of the class representatives by first and last name. (Attached hereto
7 as Exhibit 1 is the Law360 article). As a result a Google search will identify them as being the
8 employees who filed the lawsuit against PetSmart and they have legitimate concerns that this
9 information might easily discourage a prospective employer from hiring them in the future. Overall, the
10 four Plaintiffs have done an exceptional job participating and assisting us through the course of this
11 lawsuit. I am confident they will continue to participate actively in this case through its resolution.

12
13 I declare under penalty of perjury under the laws of the State of California and the United States
14 that the foregoing is true and correct.

15 Executed this 28th day of March, 2014, in San Diego, California.

16 By: /s/ Graham S.P. Hollis
17 Graham S.P. Hollis, Esq.
18 Email: ghollis@grahamhollis.com
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EXHIBIT 1

**To the Declaration of Graham S.P. Hollis ISO Supplemental
Brief in Support of Preliminary Approval**

EXHIBIT 1

To the Declaration of Graham S.P. Hollis ISO Supplemental Brief in Support of Preliminary Approval

3/24/2014

PetSmart Pays \$10M To Settle Wage Class Action - Law360



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PetSmart Pays \$10M To Settle Wage Class Action

By **Allissa Wickham**

Law360, New York (February 03, 2014, 6:58 PM ET) -- PetSmart Inc. has agreed to pay \$10 million to settle claims that it underpaid more than 16,000 current and former animal groomers and other workers across 132 stores, according to documents filed in California federal court on Friday.

The plaintiffs asked U.S. District Judge Edward J. Davila to grant preliminary approval to the settlement, which releases PetSmart from claims that its method for paying pet stylists violated minimum wage laws. The agreement also settles wage claims from nonexempt employees, who said they weren't paid for helping customers during meal breaks.

"This was a long, hard-fought settlement," Graham Stephen Paul Hollis, an attorney for the plaintiffs, told Law360 on Monday. "But PetSmart has been pretty good about addressing these policies and realizing that mistakes had been made."

Attorneys for PetSmart were not immediately available for comment.

Originally filed in Alameda County Superior Court in 2012, **the plaintiffs alleged** that PetSmart violated labor law by failing to compensate its groomers for the time they spent performing nongrooming duties, such as stocking or cleaning. This stemmed from a claim that PetSmart paid its stylists 50 percent of the net price of a grooming fee, which failed to cover the minimum wage requirement for nongrooming duties.

Additionally, the pet stylists alleged that PetSmart did not reimburse them for purchasing grooming tools, didn't provide them with suitable seats, improperly calculated vacation pay, didn't provide timely payment after employees were terminated and failed to pay for meal break violations.

The settlement also resolves allegations that the company failed to compensate hourly employees for helping customers during meal breaks. Since the employee break room was located in the back of the store, workers were occasionally forced to assist customers after they had punched out on PetSmart's time clocks, which were located in the front, Hollis said.

"PetSmart had a policy that required employees to ask customers if they needed help," Hollis told Law360. "It was the culture of the store. But the company had no policy for how to compensate people for the time they spent working while they were clocked out."

The agreement also settles claims that PetSmart only allowed its hourly employees to take 30 minute meal breaks if they worked between six and eight hours, in violation of California labor law that mandates a meal period after five hours of work.

The settlement covers all hourly employees and stylists, grooming trainees and salon managers who worked in California PetSmart stores from May 23, 2008, to the present. The class for terminated employees stretches from May 23, 2009, to the present.

3/24/2014

According to Hollis, the suit was initially filed on behalf of PetSmart groomers, but was expanded to include wage and meal break violations for nonexempt, hourly employees. Still, he said that the majority of the \$10 million settlement would go to the groomers, who typically earned more than nongroomer employees.

Hollis also noted that his firm brought the suit before a California appeals **ruled in April** that a class of auto mechanics paid on a piece-rate basis were entitled to minimum wages for time spent waiting during their shifts. The question in that case, *Gonzalez v. Downtown LA Motors*, was whether an employer that paid automotive service technicians on a piece-rate basis for repair work must also pay them a separate hourly minimum wage for time spent waiting to work or performing other nonrepair tasks.

The Gonzalez case was based on a similar theory of compensation for the PetSmart groomers, according to Hollis, who said that by filing the suit before the appeals court issued that ruling, they were "ahead of the curve."

An approval hearing of the PetSmart settlement has been set for March 7.

The plaintiffs are represented by Graham Stephen Paul Hollis and Marta Manus of GrahamHollis APC.

PetSmart is represented by Michelle B. Heverly, Elisa Nadeau, Nathalie A. Le Ngoc and Sophia Behnia of Littler Mendelson PC.

The case is *Danette M. Moore et al. v. PetSmart Inc. et al.*, case number 5:12-cv-03577, in the U.S. District Court for the Northern District of California.

--Additional reporting by Vin Gurrieri and Abigail Rubenstein. Editing by Katherine Rautenberg.
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EXHIBIT C

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ALANNA HARRISON and ALISA VALDEZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANETTE M. MOORE, LATRESA
MYERS, ALANNA HARRISON and
ALISA VALDEZ, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

PETSMART, INC., and Does 1 through
100, inclusive,

Defendant.

Case No.: 5:12-cv-03577-EJD

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

CASE NO. 5:12-CV-03577-EJD

1 This stipulation of Class Action Settlement and Release (“Agreement” or
2 “Settlement” is entered into by Plaintiffs Danette M. Moore, Latresa Myers, Alanna Harrison and
3 Alisa Valdez (“Plaintiffs”), Jeanette Negrete (a Plaintiff in a related action), and PetSmart, Inc.
4 (“Defendant” or “PetSmart”).

5 IT IS HEREBY STIPULATED AND AGREED by the undersigned Parties subject to
6 approval of the Court, that the settlement of this Action shall be effectuated upon and subject to the
7 following terms and conditions.

8 **I. DEFINITIONS**

9 The following capitalized, defined terms used in this Agreement shall have the
10 meanings ascribed to them below.

11 **1.1 Action, Lawsuit or Complaint:** Shall mean the operative Complaint in the
12 case entitled “*Danette M. Moore, et al. v. PetSmart, Inc.*” venued in the United States District Court,
13 Northern District of California, designated as Case No. 5:12-cv-03577, and any subsequent
14 pleadings and amendments thereto.

15 **1.2 Agreement:** “Agreement” or “Settlement” means this Joint Stipulation of
16 Class Action Settlement and Release.

17 **1.3 Claimant:** Shall mean every Settlement Class Member who submits a valid
18 and timely Claim Form.

19 **1.4 Class Counsel:** Shall mean Lead Class Counsel in the Action for Named
20 Plaintiffs and the Settlement Class Members, Graham S.P. Hollis and Marta Manus of GrahamHollis
21 APC, 3555 Fifth Avenue, Suite 200, San Diego, CA 92103 (hereinafter, “Lead Class Counsel”), as
22 well as Class Counsel for the Pet Stylist Settlement Class, Capstone Law APC, 1840 Century Park
23 East, Suite 450, Los Angeles, CA 90067 (hereinafter, “Pet Stylist Settlement Class Counsel”).
24 Capstone Law APC shall be deemed to represent only Class Representative Negrete and the Pet
25 Stylist Settlement Class, as defined in Section 1.15 below.

26 **1.5 Covered Timeframe:** Shall mean the period of time beginning May 23, 2008
27 through the Date of Preliminary Approval of the Settlement Agreement.
28

1 **1.6 Covered Positions:** Shall mean all non-exempt employees employed by
2 PetSmart in any of its retail stores located in California.

3 **1.7 Defendant's Counsel, Defense Counsel or Counsel for Defendant:** Shall
4 mean Michelle B. Heverly, Karin M. Cogbill and Sophia Behnia, LITTLER MENDELSON, APC,
5 50 W. San Fernando Street, 15th Floor, San Jose, CA 95113-2431.

6 **1.8 Effective Date:** Shall mean the date on which the Court grants final approval
7 of the Settlement.

8 **1.9 Individual Settlement Amount:** Shall mean the portion of the Net
9 Distribution Amount distributable to each Claimant, which will be distributed on a claims-made
10 basis, calculated pursuant to Paragraph 4.5 below.

11 **1.10 Named Plaintiffs or Class Representatives:** Shall mean Plaintiff Danette
12 M. Moore, Plaintiff Latresa Myers, Plaintiff Alanna Harrison, Plaintiff Alisa Valdez, and Plaintiff
13 Jeanette Negrete (a Plaintiff in a related action venued in U.S.D.C., Northern District, *Negrete v.*
14 *PetSmart, Inc.*, Case No. 5:13-cv-04300-EJD). Jeanette Negrete shall be deemed to represent only
15 the Pet Stylist Settlement Class, as defined in Section 1.15 below.

16 **1.11 Net Distribution Amount:** Shall mean the Total Settlement Amount of Ten
17 Million Dollars (\$10,000,000.00) less the payment to the Labor and Workforce Development
18 Agency (LWDA), attorney's fees and reasonable litigation costs awarded by the Court, the service
19 payments to the Class Representatives awarded by the Court, the Reserve Fund, and the costs of
20 administering the Settlement.

21 **1.12 Non-Exempt Employee Settlement Class:** Shall mean all individuals who
22 were employed by PetSmart as an hourly paid, non-exempt employee in California at any period of
23 time during the Covered Timeframe in a position other than Pet Stylist, Groomer, Grooming
24 Trainee, or Salon Manager.

25 **1.13 Parties:** Shall collectively refer to Plaintiffs and PetSmart.

26 **1.14 Pet Stylist:** As used herein, shall mean those employees employed by
27 PetSmart in the position of Pet Stylist, Groomer, Grooming Trainee and/or Salon Manager.
28

1 **1.15 Pet Stylist Settlement Class:** Shall mean all individuals in the Settlement
2 Class who were employed by PetSmart as a Pet Stylist, Groomer, Grooming Trainee or Salon
3 Manager in California at any period of time during the Covered Timeframe.

4 **1.16 Reserve Fund:** Shall be One Hundred Thousand Dollars and No Cents
5 (\$100,000.00) payable from the Total Settlement Amount, which will be allotted for a reserve fund,
6 for use in the event that late claims from Settlement Class Members are accepted, to compensate
7 other Settlement Class Members who have raised issues such as errors or inadvertent exclusion (i.e.
8 self-identifiers), to correct errors, and/or to resolve other disputes. Any unused portion of the
9 Reserve Fund will revert to the Net Distribution Amount, to be distributed to the Settlement Class
10 Members.

11 **1.17 Settlement Class:** Shall mean all individuals who are members of either the
12 Non-Exempt Employee Settlement Class or the Pet Stylist Settlement Class during the Covered
13 Time Frame.

14 **1.17 Settlement Administrator:** Shall mean the third party administrator
15 mutually selected by the Parties which the Parties have agreed will be responsible for administration
16 of all payments to be made by Defendant pursuant to this Agreement. In this case, Simpluris is the
17 agreed upon third party administrator.

18 **1.18 Settlement Class Member:** The individual members of the Settlement Class
19 are referred to herein individually as a "Settlement Class Member" or collectively as "Settlement
20 Class Members".

21 **1.19 PetSmart or Defendant:** is defined as, and includes, PetSmart, Inc., and
22 each of its subsidiaries, affiliates, parents and divisions.

23 **1.20 Total Settlement Amount:** Total Settlement Amount is an amount up to Ten
24 Million Dollars (\$10,000,000.00). The Total Settlement Amount is the maximum that Defendant
25 shall be required to pay under this Agreement, and shall be deemed in satisfaction of all claims
26 arising out of, related to or which could have been brought as part of the *Moore* Complaint,
27 including claims for: (1) all wages, penalties, interest, and/or other amounts to be paid to Settlement
28

1 Class Members; (2) the payment to the Labor and Workforce Development Agency (“LWDA”)
2 pursuant to the Private Attorneys’ General Act (“PAGA”); (3) attorneys’ fees and costs of Class
3 Counsel; (4) the service payments to the Class Representatives, approved by the Court; (5) all costs
4 of administration, including, without limitation, settlement administration fees; and (6) the
5 employee’s share of payroll taxes. The Total Settlement Amount also includes the Reserve Fund of
6 \$100,000.00.

7 **1.21 Waiting Time Penalties Settlement Sub-Class:** Shall mean all individual
8 members of the Non-Exempt Employee Settlement Class and/or the Pet Stylist Settlement Class who
9 separated from their employment with PetSmart at any time between May 23, 2009 and the date of
10 Preliminary Approval of the Settlement Agreement.

11 **II. GENERAL BACKGROUND**

12 **2.1** Plaintiffs initiated the Action in the Superior Court of California, County of
13 Alameda on May 23, 2012. In addition to individual disability-based claims, Plaintiffs alleged in the
14 Complaint and claimed damages and penalties at mediation for: unpaid compensation for all hours
15 worked, payment of minimum wages and overtime, payment for unpaid “unproductive time,”
16 reimbursement of reasonably incurred work-related expenses, compensation for meal and rest period
17 violations, miscalculation of vacation pay, failure to timely and properly pay wages due upon
18 termination of employment, failure to provide suitable seats, unfair competition, statutory penalties
19 (including PAGA penalties), interest and attorneys’ fees and costs, under California Labor Code §§
20 201, 202, 203, 223, 226, 226.7, 512, 1194, 1197, 1198, 2698 *et seq.*, 2802, California Code of Civil
21 Procedure §1021.5, and California Industrial Welfare Commission (IWC) Wage Order 7-2001, 8
22 Cal. Code of Reg. § 11040; and seeks specific enforcement of penalties and restitution of all benefits
23 PetSmart is alleged to have enjoyed from its alleged failure to pay minimum wages; pay for all hours
24 worked; provide meal and rest periods; properly calculate the payment of vacation pay; properly and
25 timely pay all wages due at the time of termination; provide suitable seats; and/or reimburse all
26 reasonably incurred business-related expenses. Plaintiff Negrete brought an action alleging similar
27
28

1 claims on behalf of pet stylists in the Superior Court of California, County of Shasta, on September
2 20, 2012.

3 **2.2** PetSmart denies any liability or wrongdoing of any kind associated with the
4 claims alleged in the Action. PetSmart contends, among other things, that it has complied at all
5 times with the California Labor Code, the Industrial Welfare Commission Wage Orders, and the
6 California Business and Professions Code. Moreover, PetSmart contends, specifically, that it
7 provides its non-exempt employees with all minimum and overtime wages owed, requisite meal and
8 rest periods, complies with all seating requirements, provides reimbursement for incurred work-
9 related expenses as required by law, and timely pays all wages at the time of termination as required
10 by the Labor Code, including, but not limited to, regular wages, incentive compensation and accrued
11 vacation. For its part, PetSmart took the depositions of each of the Named Plaintiffs, reviewed its
12 own electronic time records, reviewed various documents related to sample stores and engaged in
13 settlement discussions with Class Counsel.

14 **2.3** Plaintiffs contend that the Action is meritorious and that class certification is
15 appropriate.

16 **2.4** Lead Class Counsel has conducted a thorough investigation into the facts of
17 the Action including extensive formal and informal discovery, and voluntary exchanges of
18 information between the parties. Lead Class Counsel's work has included interviewing Settlement
19 Class Members, reviewing and analyzing computer time records for a sampling of Class Members,
20 reviewing relevant wages statements, and reviewing documents related to PetSmart's practices at its
21 California locations. Lead Class Counsel also took the depositions of the persons most
22 knowledgeable regarding various policies and practices of Defendant PetSmart. Lead Class Counsel
23 is knowledgeable about and has done extensive research with respect to the applicable law and
24 potential defenses to the claims of the Settlement Class. Lead Class Counsel has diligently pursued
25 an investigation of the Settlement Class Members' claims against PetSmart. Pet Stylist Settlement
26 Class Counsel also conducted a thorough investigation into the facts of the related Negrete Action
27
28

1 including extensive formal and informal discovery, and voluntary exchanges of information between
2 the parties.

3 **2.5** Following thorough investigation by both Parties, a mediation was held on
4 April 9, 2013, before Jeff Ross, in Oakland California. Although the Parties made their best efforts,
5 no settlement was reached on the day of mediation. After the mediation, the Parties continued
6 discussing settlement and exchanged additional information related to the class size and number of
7 shifts worked by the non-exempt employees. Specifically, Lead Class Counsel and counsel for
8 Defendant had multiple lengthy conversations with Mr. Ross and continued to engage in telephonic
9 negotiations. Those negotiations continued for several months and culminated with a Mediator's
10 Proposal from Mr. Ross. The Parties eventually accepted the terms of the Mediator's Proposal, with
11 some modification.

12 **2.6** Based on the data exchanged, the information provided by Defendant, and on
13 their own independent investigation and evaluation, Class Counsel is of the opinion that the
14 settlement with PetSmart for the consideration and on the terms set forth in this Agreement is fair,
15 reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all
16 known facts and circumstances, including the risk of significant delay and uncertainty associated
17 with litigation, various defenses asserted by PetSmart, and numerous potential appellate issues.
18 Although Defendant denies any liability, PetSmart has agreed to settle the claims on the terms set
19 forth herein.

20 **2.7** For settlement purposes only, PetSmart will stipulate that the Settlement Class
21 described herein should be certified.

22 **2.8** This Agreement is contingent upon the approval and certification by the Court
23 of the Class as a non-mandatory (i.e. "opt-out") class for settlement purposes only.

24 **III. CONDITIONS PRECEDENT TO SETTLEMENT TAKING EFFECT**

25 **3.1** The Parties enter into this Agreement on a conditional basis. This Agreement
26 is contingent upon, and will become final and effective only upon the occurrence, of all the
27 following events:
28

1 (a) The Court enters an order granting preliminary approval of the Settlement
2 consistent with each and every term described in this Agreement (or as otherwise agreed upon in
3 writing by the Parties);

4 (b) Mailing of the Class Notice and Claim Form to Settlement Class Members in
5 accordance with the Court's order of preliminary approval;

6 (c) The Court setting and conducting a fairness hearing;

7 (d) The Court entering an order granting final approval of the Settlement
8 consistent with each and every term described in this Agreement (or as otherwise agreed upon in
9 writing by the Parties); and

10 (e) The Payment of Settlement Funds as described in Paragraph 7 is complete.

11 (f) Judgment is entered by the Court dismissing the lawsuit as to all class claims
12 with prejudice; and

13 (g) PetSmart has not exercised its right to revoke the Agreement, as described in
14 Section 6.14.

15 **3.2** This Agreement is contingent upon each of the conditions precedent in
16 paragraph 3.1 occurring and is entered into voluntarily by the Parties for settlement purposes only.
17 To the extent this Agreement is deemed void or the Effective Date does not occur or for whatever
18 reason does not result in the final resolution of this Action, Defendant does not waive, and instead
19 expressly reserves its right to challenge all claims and allegations in the Action upon all procedural,
20 factual and legal grounds, as well as asserting any and all other potential defenses or privileges,
21 including all defenses to class certification. If the Settlement is not approved by the Court, nothing
22 in this Agreement or any draft thereof, or any documents submitted to the Court in support of this
23 Agreement or Court approval thereof, shall have any effect, nor shall any such matter be admissible
24 in evidence for any purpose in the Action or in any other proceeding or forum.

25 **IV. TERMS OF SETTLEMENT**

26 The terms of the Settlement are as follows:
27
28

1 **4.1 Total Settlement Amount:** The Parties agree to settle the Action for a Total
2 Settlement Amount of up to Ten Million Dollars (\$10,000,000.00). The Total Settlement Amount is
3 the maximum that Defendant shall be required to pay under this Agreement, and shall be deemed in
4 satisfaction of claims for: (1) all wages, penalties, interest, and/or other amounts to be paid to
5 Settlement Class Members; (2) the payment to the Labor and Workforce Development Agency
6 (“LWDA”) pursuant to the Private Attorneys’ General Act (“PAGA”); (3) attorneys’ fees and costs
7 of Class Counsel; (4) the service payments to the Class Representatives, approved by the Court; (5)
8 all costs of administration, including, without limitation, settlement administration fees; and (6) the
9 employee’s share of payroll taxes. The Total Settlement Amount also includes the Reserve Fund of
10 \$100,000.00. In no event shall Defendant be required to pay anything more than the Total
11 Settlement Amount of \$10,000,000 in connection with the settlement of the Class Claims other than
12 Defendant’s share of payroll taxes.

13 **4.2 Net Distribution Amount:** The “Net Distribution Amount” is defined as the
14 Total Settlement Amount of Ten Million Dollars (\$10,000,000.00) less the payment to the Labor and
15 Workforce Development Agency (LWDA), attorney’s fees and reasonable litigation costs awarded
16 by the Court, the service payments to the Class Representatives awarded by the Court, the Reserve
17 Fund, and the costs of administering the Settlement.

18 **4.3 Settlement Classes:** The Settlement Classes shall be as follows:

19 a) Non-Exempt Employee Settlement Class: All individuals who were
20 employed by PetSmart as an hourly paid, non-exempt employee in California
21 at any period of time during the Covered Timeframe in a position other than a
22 Pet Stylist, Groomer, Grooming Trainee or Salon Manager.

23 b) Pet Stylist Settlement Class: All individuals in the Settlement Class
24 who were employed by PetSmart as a Pet Stylist, Groomer, Grooming Trainee
25 or Salon Manager in California at any period of time during the Covered
26 Timeframe.
27
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1 c) Waiting Time Penalties Settlement Sub-Class: Shall mean all
2 individual members of the Non-Exempt Employee Settlement Class and/or the
3 Pet Stylist Settlement Class who separated from their employment with
4 PetSmart at any time between May 23, 2009 and the date of Preliminary
5 Approval of the Settlement Agreement.

6 **4.4 Allocation of the Net Distribution Amount:** The Parties agree to allocate a
7 portion of the Net Distribution Amount to the Waiting Time Penalties Settlement Sub-Class for
8 penalties pursuant to Labor Code section 203. The amount allocated to the Waiting Time Penalties
9 Settlement Sub-Class will be deducted from the Net Distribution Amount prior to the calculation of
10 the Individual Settlement Amounts of Claimants. Each member of the Waiting Time Penalties
11 Settlement Sub-Class who was employed by PetSmart in California as a Pet Stylist, Groomer,
12 Grooming Trainee or Salon Manager at the time of separation from employment will be entitled to
13 receive \$400 as a waiting time penalty in addition to their Individual Settlement Amount. Each
14 member of the Waiting Time Penalties Settlement Sub-Class who was employed by PetSmart in a
15 position other than Pet Stylist, Groomer, Grooming Trainee or Salon manager at the time of
16 separation from employment will be entitled to receive \$200 as a waiting time penalty in addition to
17 their Individual Settlement Amount. If a member of the Waiting Time Penalties Settlement Sub-
18 Class was separated from employment on more than one occasion during the applicable time period,
19 that individual will only receive payment of one waiting time penalty, and such amount shall be the
20 higher of the two applicable amounts. In other words, if a member of the Waiting Time Penalties
21 Settlement Sub-Class was terminated from employment as a Pet Stylist, Groomer, Grooming Trainee
22 or Salon Manager, and later terminated from subsequent employment in a position *other than* Pet
23 Stylist, Groomer, Grooming Trainee or Salon Manager, all during the applicable class period, that
24 individual will receive a single waiting time penalty payment of \$400 in addition to their Individual
25 Settlement Amount.

26 **4.5 Calculation of the Individual Settlement Amounts:**
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1 After deducting from the Net Distribution Amount the payments claimed by the
2 Waiting Time Penalties Settlement Sub-Class, the Settlement Administrator shall first allocate to
3 each Settlement Class Member from the Net Distribution Amount a Base Payment of \$20.00, which
4 shall be the minimum allocation that each individual Settlement Class Member will be paid under
5 the Settlement. After deduction of the waiting time penalty amounts and the Base Payment for each
6 Settlement Class Member, two-thirds (2/3) of the remaining Net Distribution Amount will be
7 allocated to payment of the Individual Settlement Amounts of the Pet Stylist Settlement Class
8 Members and one-third (1/3) of the remaining Net Distribution Amount will be allocated to those
9 Settlement Class Members who are members of the Non-Exempt Employee Settlement Class. Each
10 Claimant's Individual Settlement Amount will be based on the total gross (pre-tax) compensation
11 paid to each Claimant who worked in a Covered Position during the Covered Timeframe. As the
12 term is used in this Stipulation, "total gross (pre-tax) compensation" shall include all hourly and
13 overtime pay (or non-exempt salary and overtime pay, if the position was salaried) plus
14 commissions, based on PetSmart's compensation data. The calculation of the Individual Settlement
15 Amounts shall be determined as follows:

16 a. The Individual Settlement Amount for each Claimant who is a member of the
17 Pet Stylist Settlement Class will be determined as follows: After the deductions from the Net
18 Distribution Amount for the payments to the Waiting Time Penalties Settlement Sub-Class and for
19 the Base Payments, the Settlement Administrator will divide two-thirds (2/3) of the remaining Net
20 Distribution Amount by the total gross (pre-tax) compensation (as defined above) paid to Pet Stylist
21 Settlement Class Members for the time period when such Pet Stylist Settlement Class Members were
22 employed as Pet Stylists, Groomers, Grooming Trainees and/or Salon Managers during the Covered
23 Timeframe to determine a multiplier ("Pet Stylist Multiplier"). The Individual Settlement Amount
24 payable to each Pet Stylist Settlement Class Member will equal that Claimant's gross (pre-tax)
25 compensation earned during the Covered Timeframe times the Pet Stylist Multiplier.

26 b. The Individual Settlement Amount for each Claimant who is a member of the
27 Non-Exempt Employee Class will be determined as follows: After the deductions from the Net
28

1 Distribution Amount for the payments to the Waiting Time Penalties Settlement Sub-Class, the
2 Settlement Administrator will divide one-third (1/3) of the remaining Net Distribution Amount by
3 the total gross (pre-tax) compensation (as defined above) paid to Non-Exempt Employee Settlement
4 Class Members for the time period when such Non-Exempt Employee Class Members were
5 employed in positions other than Pet Stylists, Groomers, Grooming Trainees and/or Salon Mangers
6 during the Covered Timeframe to determine a multiplier ("Non-Exempt Employee Multiplier"). The
7 Individual Settlement Amount payable to each Non-Exempt Employee Settlement Class Member
8 will equal that Claimant's gross (pre-tax) compensation earned during the Covered Timeframe times
9 the Non-Exempt Employee Multiplier.

10 c. To the extent that any member of the Pet Stylist Settlement Class does not
11 become a Claimant and there are unclaimed funds remaining of the two-thirds (2/3) portion of the
12 Net Distribution Amount allocated to the Pet Stylist Settlement Class, the Settlement Administrator
13 shall first redistribute the unclaimed funds to the Claimants in the Pet Stylist Settlement Class in
14 proportion to each Pet Stylist Class Member's Individual Settlement Amount. Notwithstanding the
15 pro-rata increase, no Claimant shall be entitled to recover more than three times (3x) his or her
16 original Individual Settlement Amount. In the event that the redistribution causes Claimants'
17 Individual Settlement Amounts to be increased by more than three times (3x) his or her original
18 Individual Settlement Amount, the Settlement Administrator shall then redistribute the remaining
19 unclaimed funds to the Claimants in the Non-Exempt Employee Settlement Class in proportion to
20 each Claimant's Individual Settlement Amount. Notwithstanding the pro-rata increase, no Claimant
21 shall be entitled to recover more than three times (3x) his or her original Individual Settlement
22 Amount. In the event that the redistribution causes Claimants' Individual Settlement Amounts to be
23 increased by more than three times (3x) his or her original Individual Settlement Amount, the
24 remaining unclaimed funds shall first be used to pay PetSmart's share of any employer side payroll
25 taxes owed pursuant to Section 4.1. Any Net Distribution Amount remaining after the payment of
26 employer taxes shall be paid to a *cy pres* recipient designated jointly by the parties as Legal Aid
27 Society – Employment Law Center, 180 Montgomery Street, Suite 600, San Francisco, CA 94104.
28

1 To the extent that any member of the Non-Exempt Employee Settlement Class does
2 not, for any reason, become a Claimant and there are, for this or any reason, unclaimed funds
3 remaining of the one-third (1/3) portion of the Net Distribution Amount allocated to the Non-Exempt
4 Employee Settlement Class, the Settlement Administrator shall first redistribute the unclaimed funds
5 to the Claimants in the Non-Exempt Employee Settlement Class in proportion to each Claimant's
6 Individual Settlement Amount. Notwithstanding the pro-rata increase, no Claimant shall be entitled
7 to recover more than three times (3x) his or her original Individual Settlement Amount. In the event
8 that the redistribution causes Claimants' Individual Settlement Amounts to be increased by more
9 than three times (3x) his or her original Individual Settlement Amount, the Settlement Administrator
10 shall then redistribute the remaining unclaimed funds to the Claimants in the Pet Stylist Settlement
11 Class in proportion to each Claimant's Individual Settlement Amount. Notwithstanding the pro-rata
12 increase, no Claimant shall be entitled to recover more than three times (3x) his or her original
13 Individual Settlement Amount. In the event that the redistribution causes Claimants' Individual
14 Settlement Amounts to be increased by more than three times (3x) his or her original Individual
15 Settlement Amount, the remaining unclaimed funds shall first be used to pay PetSmart's share of any
16 taxes owed pursuant to Section 4.1. Any Net Distribution Amount remaining after the payment of
17 employer taxes shall be paid to a *cy pres* recipient designated jointly by the parties as Legal Aid
18 Society – Employment Law Center, 180 Montgomery Street, Suite 600, San Francisco, CA 94104.

19 **4.6 Allocation of Individual Settlement Amounts:** Fifty percent (50%) of each
20 Claimant's Individual Settlement Amount will be treated as back wages and subject to normal tax
21 withholding and shall be reported to the taxing authorities on an IRS Form W-2. Fifty percent (50%)
22 of each Claimant's Individual Settlement Amount will be treated as prejudgment interest and
23 statutory penalties on which there will be no tax withholding and for which an IRS Form 1099
24 (marked "Other Income") shall be issued if the payment is above the minimum threshold required
25 for the issuance of a Form 1099. The Individual Settlement Amounts and/or the Class
26 Representatives' service payment, will not count or be counted for determination of eligibility for, or
27 calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, non-qualified
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1 deferred compensation plans, pension plans, matching contributions, etc.), or otherwise modify any
2 eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by
3 PetSmart, unless otherwise required by law. Defendant and Class Counsel make no warranty and
4 have provided no advice regarding the tax treatment of payments. All taxes, other than the
5 employer's share of payroll taxes, are the sole responsibility of the Claimant receiving the payment.

6 **4.7 LWDA Private Attorney General Act ("PAGA") Payment:** The Parties
7 agree that \$50,000 of the Total Settlement Amount shall be allocated as settlement of claims under
8 the California Private Attorney General Act ("PAGA"). Seventy-five percent (75%) of that total or,
9 \$37,500 shall be paid to the LWDA pursuant to the provisions of PAGA. The remaining twenty-five
10 percent (25%), or \$12,500, shall be distributed to the Claimants as part of the Net Distribution
11 Amount.

12 **4.8 Service Payment to Class Representatives:** The amount, if any, awarded to
13 the Class Representative as a service payment will be set by the Court. PetSmart does not endorse
14 the following amounts, but agrees not to file any pleading in opposition to Plaintiffs' request for a
15 service payment up to \$10,000 for Plaintiff Harrison and Plaintiff Valdez and up to \$5000 for
16 Plaintiff Moore, Plaintiff Myers, and Jeanette Negrete. This amount will come from the Total
17 Settlement Amount. The service payment will be in addition to the Individual Settlement Amount
18 awarded to the Class Representatives. The Settlement Administrator will issue an IRS Form 1099
19 with regard to the service payment and all taxes on this payment shall be the sole responsibility of
20 each respective Class Representative. In the event the Court reduces the service payment and
21 awards less than \$10,000 for Plaintiff Harrison and Plaintiff Valdez and \$5,000 for Plaintiff Moore,
22 Plaintiff Myers, and Negrete, the unawarded amount shall be returned to PetSmart and shall not be
23 available for class distribution. If the Court does not specifically approve the release provided by the
24 Plaintiffs as specified in Sections 5.5, Plaintiffs/Class Representatives shall not be entitled to any
25 service payment award, and the unawarded amount shall be returned to PetSmart and shall not be
26 available for class distribution. Lead Class Counsel GrahamHollis APC shall be responsible for
27 providing declarations from Plaintiffs Moore, Myers, Harrison and Valdez in support of their
28

1 requests for service payments. Pet Stylist Settlement Class Counsel Capstone Law shall be
2 responsible for providing a declaration from Negrete in support of her request for a service payment.

3 **4.9 Attorneys' Fees and Costs to Class Counsel:** PetSmart agrees not to oppose
4 a total award of fees to Class Counsel of up to 33.33% of the Total Settlement Amount. Lead Class
5 Counsel GrahamHollis APC shall apply for an award of fees of up to 28.83% of the Total Settlement
6 Amount (or \$2,883,000), and costs incurred by Lead Class Counsel. Pet Stylist Settlement Class
7 Counsel Capstone Law APC shall apply for an award of fees of up to 4.5% of the Total Settlement
8 Amount (or \$450,000), and costs incurred by Pet Stylist Settlement Class Counsel. Class Counsel
9 agree that they shall not oppose the attorneys' fee awards requested by each other. Said fees shall be
10 in addition to payment of all costs actually incurred by Class Counsel in connection with this matter.
11 Failure of the court to award the requested attorney's fees and costs is not a ground to void the
12 Agreement.

13 **4.10** If the Court does not award a total of 33.33% of the Total Settlement Amount
14 as attorneys' fees, or the requested amounts of 28.83% to Lead Class Counsel and 4.5% to Pet Stylist
15 Settlement Class Counsel, the unawarded amounts shall be returned to PetSmart and shall not be
16 available for class distribution.

17 **4.11 Non-Monetary Terms of the Settlement:** In addition to the monetary
18 Settlement identified in Section 4.1, as part of the resolution of this matter, PetSmart also agrees to
19 the following:

20 a. PetSmart has agreed to provide additional grooming tools for its in-store
21 salons to be used by its Pet Stylists. Moreover, PetSmart is providing specific communication to Pet
22 Stylists on the use of store tools by Pet Stylists. The Parties agree that provision of these additional
23 in-store grooming tools for use by Pet Stylists to perform their grooming duties satisfies PetSmart's
24 obligations under Labor Code section 2802 and/or any other state or federal law requiring the
25 reimbursement of business expenses.

26 b. PetSmart has agreed to revise its Pet Stylist pay plans to specifically confirm
27 that grooming employees are being paid for all hours worked at their regular rate, and that any other
28

1 amounts paid are in addition to the hourly rate. The Parties agree that the revised pay plan complies
2 with the requirements of state and federal law.

3 c. As part of the agreement between the Parties, Defendant retained a consultant
4 specializing in safety and ergonomic issues to conduct an ergonomic and safety evaluation of its
5 current practices and to review its policies and procedures with regard to addressing whether to
6 allow Pet Stylists to sit while performing grooming tasks. PetSmart's retention of the consultant,
7 and the results of the review, is subject to attorney-client privilege and/or attorney work product
8 doctrine. PetSmart is not obligated, through this Agreement, or otherwise, to disclose the results and
9 findings of the consultant or to make any changes to its current practices.

10 d. PetSmart has revised its policies to emphasize that all hours worked will be
11 paid, to expressly prohibit off-the clock work, to require that any employee who performs work off-
12 the-clock must inform his or her manager of such incident, and to allow employees who are
13 interrupted during meal or rest breaks additional time to take a full, uninterrupted meal or rest break.

14 **4.12** Plaintiffs believe that the settlement is fair and reasonable and will so
15 represent to the Court. Although it denies any liability, PetSmart has agreed to settle the claims on
16 the terms set forth herein.

17 **V. RELEASE OF CLAIMS BY SETTLEMENT CLASS MEMBERS WHO DO NOT**
18 **OPT-OUT**

19 **5.1** Upon the final approval of the Settlement by the Court, and except as to such
20 rights or claims as may be created by this Agreement, each member of the Settlement Class (other
21 than opt-outs), regardless of whether he or she has timely submitted a Claim Form, will fully release
22 and discharge PetSmart, including its former and present parent companies, subsidiaries, divisions,
23 concepts, related or affiliated companies, shareholders, officers, directors, employees, partners,
24 agents, representatives, attorneys, insurers, successors and assigns, and any individual or entity that
25 could be jointly liable with any of the foregoing ("Released Parties") from any claims, causes of
26 action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations,
27 attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or
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1 nature, whether known or unknown, suspected or unsuspected, arising from: (1) the Action and any
2 claims arising out of, or related to the actual claims asserted or factual allegations in the Action
3 including all claims made under the California Labor Code, Industrial Welfare Commission Wage
4 Orders, and the California Business and Professions Code, claims under PAGA, claims for
5 restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties,
6 penalties of any nature whatsoever, other compensation or benefits; and (2) any alleged wage and
7 hour violations that were made or could have been made based on the actual claims asserted or
8 factual allegations in the Action, whether premised on statute, contract, tort or other theory of
9 liability under state or local law, by any Class Member against the Released Parties (collectively, the
10 "Released Claims"), and including, but not limited to, any claims specifically referenced herein. In
11 addition, any Class Member who timely submits a Claim Form will fully and forever release and
12 discharge the Released Parties from any claims arising out of, or related to the actual claims asserted
13 or factual allegations in the Action including all claims made under the Fair Labor Standards Act
14 ("FLSA") and any alleged federal wage and hour violations/allegations that were made or could
15 have been made based on the actual claims asserted or factual allegations in the Action, whether
16 premised on statute, regulation contract, tort or other theory of liability under federal law or
17 regulation by any Class Member against the Released Parties (collectively, the "FLSA Released
18 Claims"). The release will include any claims arising from or that may have arisen from the Parties'
19 respective prosecution and/or defense of this litigation. The release will apply to the Covered Time
20 Frame and include any cause of action alleged in or which could have been alleged based on the
21 facts in the Complaint or any Amended Complaint that may be filed prior to the approval of this
22 Settlement. All Released Claims are released for all Class Members regardless of whether they
23 submit a Claim Form or receive any payment under the Settlement unless they Opt-Out of the
24 Settlement, and all FLSA Released Claims are released for all Class Members who timely submit a
25 Claim Form, regardless of whether they receive any payment under the Settlement. The Released
26 Claims and FLSA Released Claims do not include claims for workers' compensation benefits or any
27 of the claims that may not be released by law.
28

1 **5.2** The release will cover all remedies that could be claimed based on the actual
2 claims in the causes of action described in the Action including but not limited to, statutory,
3 constitutional, contractual and common law claims for wages, damages, unpaid costs, penalties,
4 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and
5 equitable relief. The release will cover all statutory violations that could be claimed for the causes of
6 action described in the Action including but not limited to, the federal Fair Labor Standards Act, the
7 California Labor Code Sections 96 through 98.2 *et seq.*, the California Payment of Wages Law, and
8 in particular, California Labor Code §§200 *et seq.*, including California Labor Code §§200 through
9 243, and §§203 and 218 and 218.5 in particular, California Labor Code §§300 *et seq.*; California
10 Labor Code §§400 *et seq.*; California Working Hours Law, California Labor Code §§500 *et seq.*,
11 California Labor Code §1194; the California Unfair Competition Act, and in particular, California
12 Business & Professions Code §§17200 *et seq.*; the PAG Act, codified at California Labor Code
13 §§2698 through 2699; California Code of Civil Procedure §1021.5; and any other provision of the
14 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in
15 all of their iterations. Nothing in this paragraph is intended to extend the scope of the release
16 applicable to the Settlement Class Members as described in Paragraph 5.1.

17 **5.3** The release of claims provided by this Agreement includes claims that are
18 described in the Action and as to those claims each Settlement Class Member, including the Class
19 Representatives, waives all rights and benefits afforded by Section 1542 of the California Civil Code
20 as to unknown claims and does so understanding the significance of that waiver. Section 1542
21 provides:

22 **A general release does not extend to claims which the creditor does**
23 **not know or suspect to exist in his or her favor at the time of**
24 **executing the release, which if known by him or her must have**
25 **materially affected his or her settlement with the debtor.**

26 Nothing in this paragraph is intended to extend the scope of the release applicable to the Class
27 Members as described in Paragraph 5.1.
28

1 **5.4** All Class Members shall be enjoined from filing any DLSE claims or from
2 initiating or pursuing any proceedings regarding claims released by the Agreement before opting out
3 of the Settlement. In addition, Class Members who file a claim and who thereby opt into the
4 settlement of all FLSA claims shall be enjoined from initiating or pursuing any proceedings
5 regarding any California state law claims or any federal FLSA claims released by this Agreement.

6 **5.5** Upon final approval of the settlement and payment of all sums required under
7 this Agreement, Named Plaintiffs/Class Representatives will execute a general release of all known
8 and unknown claims each may have against PetSmart as of that date, with the sole exception that
9 Plaintiffs may continue to pursue their individual claims as stated in the Complaint for wrongful
10 termination in violation of public policy, failure to accommodate and failure to engage in the
11 interactive process under the Fair Employment and Housing Act. The unreleased claims are
12 specifically limited to the following: the First, Third and Fourth cause of action as to Plaintiff
13 Moore; the First and Third causes of action as to Plaintiff Myers as well as Plaintiff Myers' potential
14 wrongful termination in violation of public policy claim; the First and Third causes of action as to
15 Plaintiff Valdez and any claim related to Plaintiff Valdez's current employment with PetSmart; and
16 the Second and Third causes of action as to Plaintiff Harrison and any claim related to Plaintiff
17 Harrison's current employment with PetSmart (hereinafter "Unreleased Claims"). To ensure that the
18 releases provided for in this Agreement are fully enforceable in accordance with their terms, with the
19 exception of the Unreleased Claims, Plaintiffs knowingly and voluntarily waive any protection that
20 they might have by virtue of Section 1542 of the California Civil Code, which provides:

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
22 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
23 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
24 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
25 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
26 **HER SETTLEMENT WITH THE DEBTOR.**

27 In addition, Plaintiffs hereby knowingly and voluntarily waive any protection that may exist under
28 any comparable or similar statutes under the laws of any state and/or principles of common law, as it
pertains to the enforcement of the release provided for in this paragraph. The releases by the

1 Plaintiffs are intended to be broad and the Plaintiffs agree to release any and all claims, whether
2 known or unknown, they may have against PetSmart as of the date of Preliminary Approval of the
3 Settlement, with the exception of the specific Unreleased Claims.

4 **5.6** Other than the need to file a Claim Form and the requirement that objectors
5 make themselves available, the release of claims described in sections 5.1-5.4 shall be the sole
6 requirement that the Settlement places on Settlement Class Members other than the Class
7 Representatives. Excepting the foregoing, the Settlement shall not impose any affirmative duties or
8 obligations on the Settlement Class Members.

9 **5.7** In addition to the release of claims provided for herein, Class Representative
10 Jeanette Negrete agrees to join the parties in seeking approval of the settlement, and to file a notice
11 of dismissal with prejudice of, or take any other actions necessary to dismiss with prejudice, her
12 appeal before the United States Court of Appeals for the Ninth Circuit, Case No. 14-15631, and her
13 separately filed civil action pending before the Northern District of California, captioned *Jeanette*
14 *Negrete, individually and on behalf of other members of the general public similarly situated, and as*
15 *an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA") v. PetSmart, Inc.,*
16 *Randy Mosbacher and Does 1-10*, Case No. 13-cv-04300-EJD. With respect to her appeal, Negrete
17 must file the requisite notice or stipulation of dismissal with prejudice with the Court of Appeals
18 within two business days of the Parties' execution of this Stipulation. With respect to Case No. 13-
19 cv-04300-EJD pending before the Northern District of California, upon execution of this Stipulation,
20 Negrete agrees to jointly (with PetSmart) seek a stay of proceedings pending final approval of the
21 settlement. Negrete must file the requisite notice or stipulation of dismissal with prejudice within
22 five days of the order granting final approval to the Settlement and payment of sums owed to her
23 under this Agreement.

24 **VI. NOTICE AND CLAIM PROCESS**

25 **6.1** The Parties have received bids for four settlement administrators from the list
26 approved by defense counsel, and have mutually selected Simpluris to act as the Settlement
27 Administrator for this matter. The duties of the Settlement Administrator will include compiling the
28

1 class list from information provided by the Parties, handling all mailings to the Settlement Class,
2 tracing undeliverable mailings, recording and tracking responses to the mailing to the Settlement
3 Class (including recording the identity of any Settlement Class Members who submit Claim Forms
4 or request exclusion), responding to inquiries made by the Settlement Class, calculating Individual
5 Settlement Amounts, issuance of and mailing out of Individual Settlement Amounts, reporting
6 payment of the Individual Settlement Amounts to all required taxing and other authorities, taking
7 appropriate withholding from the Individual Settlement Amounts, and paying all employer payroll
8 taxes and other required payments withheld, and other related tasks as mutually agreed to by the
9 Parties. It is also understood that the Settlement Administrator will establish a Qualified Settlement
10 Fund ("QSF") pursuant to Section 468B(g) of the Internal Revenue Code, and regulations
11 promulgated thereunder for the purpose of administering this Settlement. All of the costs, fees,
12 expenses, and liabilities incurred by the Settlement Administrator in performing these functions shall
13 be paid out of the Total Settlement Amount.

14 **6.2** No later than five (5) business days before the notice mailing deadline,
15 PetSmart shall provide the Settlement Administrator and Class Counsel with a list in electronically
16 usable format regarding all Settlement Class Members, including their (a) last known address, (b)
17 telephone number (if available), (c) Social Security Number, (d) weeks worked in a Covered
18 Position(s) in each of the Settlement Classes during the Covered Timeframes, (e) total gross
19 compensation paid to Settlement Class Members during the Covered Timeframe, which shall include
20 all hourly and overtime pay (or non-exempt salary and overtime pay, if the position was salaried)
21 plus commissions, based on PetSmart's compensation data;¹ and (f) estimated payout (as calculated
22

23 ¹ Computations and distributions are based on the HRIS (Human Resources Information System) and
24 compensation data produced by PetSmart. Reasonable assumptions were applied where there were
25 limitations such as, e.g., where different information systems (in place at different times within the statute of
26 limitations) had to be combined and normalized to calculate class member workweeks in each class. Any
27 class member with less than one full workweek in a particular class was allocated one full workweek within
28 that class. Available compensation data was de-duplicated and allocated to the specific class in which it was
earned to the extent possible. To the extent that only a portion of the total compensation earned in a particular
pay period was within the relevant time period for one of the classes, all of the earned compensation (as
defined above) for that pay period was credited to that class. If a pay period spanned time worked in both the
Non-Exempt Employee Settlement Class and the Pet Stylist Settlement Class and compensation could not
precisely be apportioned between the two, the compensation was credited to the Pet Stylist Settlement Class
for purposes of this analysis. Additionally, for class members who worked during the Covered Timeframe

1 under Section 4.4) in connection with the Waiting Time Penalties Settlement Sub-Class. Class
2 Counsel may provide the Settlement Administrator with any information that may assist the
3 Settlement Administrator in obtaining current contact information for any Settlement Class Member.
4 The Parties agree that the information provided pursuant to this Section will be kept completely
5 confidential and will not be released or used for any purpose other than identifying Settlement Class
6 Members and researching current contact information.

7 **6.3** The Settlement Administrator shall mail a Notice of Pendency of Class
8 Action, Proposed Settlement and Hearing Date for Court Approval (“Notice”) in the form approved
9 by the Court, no later than twenty-five (25) days after the Court grants Preliminary Approval or as
10 otherwise ordered by the Court. The Notice will include an explanation of the Settlement Class
11 Member’s right to be excluded from the Settlement Class by submitting a written request for
12 exclusion. Attached to the Notice will be a Claim Form and Release (“Claim Form”), in the form
13 approved by the Court. The envelope containing the Class Notice shall bear the following phrase in
14 bold type, “RETURN SERVICE REQUESTED.” The envelope shall also bear the following phrase
15 in the bottom left hand corner: IMPORTANT—PETSMART CLASS ACTION SETTLEMENT
16 INFORMATION. PLEASE OPEN IMMEDIATELY. Included with the Class Notice shall be a pre-
17 paid, pre-addressed envelope for the Class Member to respond to the Claim Notice.

18 **6.4** The Settlement Administrator will take reasonable steps to ensure that the
19 Notice and Claim Form are sent to all Settlement Class Members. For each Class Member who
20 according to the records provided by PetSmart is a current active employee, the Settlement
21 Administrator shall mail the Class Notice to the last known address provided by PetSmart. No
22 reasonable verification or Accurint skip tracing will be conducted on Class Members designated in
23 PetSmart’s records as active, as the settling Parties agree that PetSmart should have the most up to
24 date address information for these Class Members. For Class Members who according to the records
25 provided by PetSmart are former employees, and who are not Class Representatives, prior to mailing
26 the Class Notice, the Settlement Administrator shall undertake a reasonable address verification and
27
28 and had compensation of less than \$100 in any class, a minimum of \$100 was assumed to have been earned
for that class member for purposes of determining their proportional share of the applicable class’s payout.

1 Accurant skip tracing to ascertain the accuracy of the last known address of the Class Member. To
2 the extent this process yields an updated address, that updated address shall replace the last known
3 address and be treated as the last known address for purposes of this Stipulation and for Class Notice
4 mailing. If a Class Member is known to be deceased, the Class Notice for that Class Member shall
5 be mailed to the last known address (or updated address, if applicable) of the legal representative of
6 the deceased Class Member's estate, to the extent known. Unless the Settlement Administrator
7 receives a Class Notice returned from the United States Postal Service for reasons stated below, that
8 Class Notice shall be deemed mailed and received by the Class Member to whom it was sent five (5)
9 days after mailing. In the event that subsequent to the first mailing of a Class Notice and prior to the
10 Claim Deadline, that Class Notice is returned to the Settlement Administrator by the United States
11 Postal Service because the address is no longer valid i.e. the envelope is marked "Return to sender"
12 the Settlement Administrator shall undertake Experian (or similar service) skip tracing on the Class
13 Member to attempt to ascertain the current address of the particular Class Member and, if such an
14 address is ascertained, the Settlement Administrator will resend the Class Notice within three (3)
15 business days of receipt of the returned Class Notice. In either event the class Notice will be deemed
16 received once it is mailed for the second time. In the event that the Settlement Administrator must
17 re-mail any class Notice pursuant to the provisions of this paragraph the Claim, the Opt-Out and
18 Objection Deadlines shall be extended for those re-mailings to no later than ten (10) calendar days
19 from the date of re-mailing of the Class Notice. The Settlement Administrator shall include a cover
20 letter with any re-mailing informing the Class Member of the re-mailing of the Class Notice and that
21 he or she has ten (10) calendar days from the date of the re-mailing (which shall be the date the re-
22 mailing of the Class Notice is postmarked) to return to the Settlement Administrator via U.S. first
23 class mail (or submit via the Settlement Claim website for a claim only) any response allowed by the
24 Stipulation and Class Notice, even if postmarked after the original Claim, Objection and Opt-Out
25 Deadlines. Compliance with the procedures outlined in this paragraph shall constitute sufficient
26 notice to Class Members of this proposed settlement and of the Settlement Hearing, and shall satisfy
27 the requirements of due process. Nothing else shall be required to be done by the Settling Parties,
28

1 Class Counsel, Counsel for PetSmart, or the Settlement Administrator to provide notice of the
2 proposed settlement and Settlement Hearing. For the five Class Representatives the Settlement
3 Administrator shall mail the Class Notice to the Class Representatives in care of Class Counsel at
4 Class Counsel's address – specifically, the Class Notices to the four Named Plaintiffs will be sent to
5 Lead Class Counsel, and the Class Notice to Class Representative Negrete will be sent to Pet Stylist
6 Settlement Class Counsel.

7 **6.5** The Settlement Administrator shall maintain a toll-free telephone line that
8 shall be staffed and/or provide automated Interactive Voice Response with the ability for Settlement
9 Class Members to leave messages during non-business hours.

10 **6.6** The Settlement Administrator shall maintain a website with the URL
11 www.petsmartsettlement.com that Settlement Class Members can use to file a Claim Form, track the
12 processing of a Claim Form, and contact the Settlement Administrator if they have questions. The
13 form of the website shall be subject to the approval of Class Counsel and Defendant's Counsel.

14 **6.7** Each Claim Form will show the minimum estimated payment amount for that
15 Settlement Class Member and the total number of workweeks that the Settlement Class Member
16 worked as either a Pet Stylist, Groomer, Grooming Trainee and/or Salon Manager, or, in a position
17 other than a Pet Stylist, Groomer, Grooming Trainee and/or Salon Manager, during the Covered
18 Timeframe. If a Settlement Class Member disputes the number of workweeks or the estimated
19 payment amount listed on his or her Claim Form, the Settlement Class Member may provide written
20 documentation to the Settlement Administrator to support his or her dispute. When a Settlement
21 Class Member disputes the number of workweeks or estimated payment listed on his or her Claim
22 Form, PetSmart's records will control. Resolution of these and similar issues will be paid from the
23 Reserve Fund until it is exhausted. In no event, however, shall the resolution of any such dispute
24 result in PetSmart being required to pay more than the Total Settlement Amount.

25 **6.8** Each Settlement Class Member will have sixty (60) calendar days from the
26 date the Claim Forms were mailed to submit the completed Claim Form or request exclusion by U.S.
27 first class mail to the Settlement Administrator. For a Class Member to validly exclude himself or
28

1 herself from the Class and this Settlement (*i.e.*, to validly opt-out), a written request for exclusion
2 must be signed by the Class Member, and must be sent to the Settlement Administrator, the Class
3 Notice shall contain instructions on how to opt-out, including the language to be used in a request for
4 exclusion. By submitting such a request for exclusion, a Class Member shall be deemed to have
5 exercised his or her option to opt out of the class action lawsuit, except that exercising the option to
6 opt out does not alter the binding nature of the release of PAGA claims or remedies pursuant to the
7 final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Accordingly, a Class
8 Member who timely submits a valid request for exclusion will not be entitled to any money under
9 this Settlement.

10 **6.9** Thirty (30) days after the initial mailing of the Notice and Claim Form, the
11 Settlement Administrator will mail to each Settlement Class Member who has not responded with
12 the return of a Claim Form or a request for exclusion, a postcard to remind each such Settlement
13 Class Member to submit a Claim Form before the deadline in the form approved by the Court.

14 **6.10** Any Settlement Class Member who objects to this Settlement shall file his or
15 her objection with the Court and serve the objection on Class Counsel and Counsel for Defendant
16 within thirty (30) calendar days from the date the Claims Forms were mailed.

17 **6.11** A Claim Form or request for exclusion must be signed and dated to be valid.
18 In the case of Claim Forms submitted via the website, an electronic signature shall be sufficient for
19 all purposes. If a Settlement Class Member submits both a Claim Form and a request for exclusion,
20 the Claim Form shall control and the request for exclusion shall have no effect.

21 **6.12** If a Claim Form or request for exclusion is returned by a Settlement Class
22 Member but has not been signed or is otherwise materially deficient, the Settlement Administrator
23 will send a deficiency notice to the Settlement Class Member within three (3) business days of the
24 date the Settlement Administrator becomes aware of such deficiency. Any deficient Claim Form
25 that was originally submitted on or before the deadline to submit a claim shall be accepted and paid
26 if the deficiency is cured within seven (7) calendar days prior to the date of the Final Approval
27 Hearing. Any request for exclusion that was originally submitted on or before the deadline to submit
28

1 a request for exclusion shall be effective if the deficiency is cured within seven (7) calendar days
2 prior to the date of the Final Approval Hearing.

3 **6.13** At least ten (10) court days prior to the deadline for filing the Motion for Final
4 Approval the Settlement Administrator shall provide counsel for the Parties a declaration of due
5 diligence and proof of mailing with regard to the mailing of the Notice and Claim Form.

6 **6.14** If more than 10% of the Settlement Class Members submit a request for
7 exclusion of the settlement, PetSmart may at its own election void this Agreement.

8 **6.15** If there is an objection and/or an appeal as a result of said objection, all sides
9 will bear their own costs of appeal, including legal fees.

10 **6.15** PetSmart retains the right, solely at its own discretion, to accept any late filed
11 Claim Forms from Settlement Class Members, up to and including fifteen (15) calendar days prior to
12 the final approval hearing, and to review and accept the claims of any self-identifiers. Resolution of
13 these and similar issues will be paid from the Reserve Fund until it is exhausted.

14 **VII. PAYMENT OF SETTLEMENT FUNDS**

15 **7.1** Within fifteen (15) business days after the Court grants Final Approval,
16 PetSmart will deliver to the Settlement Administrator the Total Settlement Amount, provided that
17 the Settlement Administrator has provided PetSmart with the appropriate wire transfer information
18 and an executed IRS Form W9.

19 **7.2** If no objection to the Settlement is pending at the time of the Final Approval
20 Hearing, the Settlement Administrator shall disburse payments according to the following schedule:
21 No later than five (5) calendar days after receiving payment, the Settlement Administrator shall
22 transfer to Lead Class Counsel and Pet Stylist Settlement Class Counsel by separate wire transfers
23 the attorney's fees and costs awarded to each by the Court. No later than ten (10) calendar days after
24 receiving payment, the Settlement Administrator shall send to Lead Class Counsel via overnight
25 mail checks to Named Plaintiffs/Class Representative Moore, Myers, Harrison, and Valdez in the
26 amounts of the Service Payments ordered by the Court, and a separate check to Pet Stylist
27 Settlement Class Counsel for the amount of the Service Payment ordered by the Court for Class
28

1 Representative Negrete (on the condition that her appeal and her other civil action before the
2 Northern District of California have both been dismissed with prejudice). No later than thirty-five
3 (35) calendar days after receipt of the funds from PetSmart, the Settlement Administrator will mail
4 the payments to the Claimants and the LWDA, and will pay the settlement administration fees and
5 costs.

6 **7.3** If an objection is pending at the time of the Final Approval Hearing, the
7 Settlement Administrator shall hold the Net Settlement Amount in escrow until the deadline for
8 appeal from the judgment granting Final Approval to the Settlement has passed. If there is an appeal
9 of the order granting final approval, the Settlement Administrator shall hold the Net Settlement
10 Amount in escrow until the appeal has been resolved. The Settlement Administrator shall disburse
11 all undistributed funds within fifteen (15) days after the escrow period ends.

12 **7.4** If a settlement check is returned by the postal service, the Settlement
13 Administrator may use appropriate methods including but not limited to skip-trace and telephone
14 follow-up to obtain the current address of the Claimant. The Settlement Administrator will re-mail
15 all checks that were returned by the postal service within five (5) days.

16 **7.5** Settlement checks that are returned a second time and settlement checks not
17 cashed within 180 days of issuance will not be re-issued. If a Claimant does not cash or deposit his
18 or her check within 180 days from the date of issuance, or if a settlement check is returned for a
19 second time, the Settlement Administrator shall cause that Claimant's payment to be sent to the
20 California State Controller's office to be placed in the Unclaimed Property Fund for the benefit of
21 the Claimant. In such event, this Agreement will be binding upon the Claimant to the same extent as
22 if he or she had received and timely cashed the settlement check.

23 **VIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**

24 **8.1** Promptly after execution of this Agreement, Plaintiffs shall move the Court
25 for Preliminary Approval of this Settlement and entry of an order accomplishing the following:
26
27
28

1 (a) scheduling a fairness hearing on the question of whether the proposed
2 settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class
3 Members;

4 (b) approving as to form and content the proposed Notice;

5 (c) approving as to form and content the proposed Claim Form;

6 (d) directing the mailing of the Notice and Claim Form by first class mail to the
7 Settlement Class Members;

8 (e) preliminarily approving this Settlement;

9 (f) preliminarily certifying the Settlement Class for purposes of settlement; and

10 (g) preliminarily approving the PAG Act payment to the LWDA.

11 **8.2** Class Counsel shall be responsible for drafting and filing the Motion for
12 Preliminary Approval, but shall provide Defendant with the opportunity to review and comment
13 prior to filing. The Parties shall submit this Agreement in support of the Motion for Preliminary
14 Approval of the Settlement.

15 **8.3** Prior to the filing of the Motion for Preliminary Approval, Class Counsel shall
16 treat the terms of this settlement, both the fact of and the amount, as strictly confidential. Neither the
17 fact of nor the amount of this settlement shall be disclosed to any person prior to the filing. As the
18 sole exception, the settlement and its terms may be discussed among those who have signed a
19 mediation confidentiality agreement and who agree to keep the terms of this agreement strictly
20 confidential.

21 **IX. DUTIES OF THE PARTIES PRIOR TO FINAL APPROVAL**

22 **9.1** In connection with the hearing on final approval of the Settlement, Plaintiffs
23 will submit a proposed final order approving the Settlement, adjudging the terms thereof to be fair,
24 reasonable and adequate, and directing consummation of its terms and provisions. Lead Class
25 Counsel shall be responsible for drafting and filing the Motion for Final Approval, but shall allow
26 opportunity for Defendant's counsel to review and comment prior to filing.

1 **9.2** Lead Class Counsel shall be responsible for filing their Motion for Approval of their
2 Attorneys' Fees and Costs, with supporting documentation. Pet Stylist Settlement Class Counsel shall be
3 responsible for filing their Motion for their Attorneys' Fees and Costs, with supporting documentation.

4 **9.3** The Parties each expressly waives any right to appeal they may have in
5 connection with any ruling of the Court in connection with the Action and this Settlement.

6 **9.4** Upon a showing that PetSmart has made all payments required by this
7 Agreement, the Parties will jointly move for an order dismissing the Action on the merits and with
8 prejudice, and permanently barring all Settlement Class Members who did not otherwise opt-out of
9 the Settlement from prosecuting any Released Claims against any of the Released Parties.

10 **X. SIGNATORIES AUTHORITY**

11 **10.1** The signatories hereto represent that they are fully authorized to enter into this
12 Agreement and bind the Parties hereto.

13 **XI. MUTUAL FULL COOPERATION**

14 **11.1** The Parties agree to fully cooperate with each other to accomplish the terms
15 of this Agreement, including but not limited to, execution of such documents and to take such other
16 action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
17 Agreement shall use their best efforts, including all reasonable efforts contemplated by this
18 Agreement and any other reasonable efforts that may become necessary by order of the Court, or
19 otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after
20 execution of this Agreement, Class Counsel shall, with the assistance and cooperation of PetSmart
21 and their counsel, take all reasonably necessary steps to secure the Court's preliminary and final
22 approval of the settlement.

23 **XII. NO PRIOR ASSIGNMENTS**

24 **12.1** The Parties hereto represent, covenant, and warrant that they have not directly
25 or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
26 person or entity any portion of any liability, claim, demand, action, cause of action or rights released
27 and discharged by this Agreement.
28

XIII. ENFORCEMENT ACTION

13.1 Except as otherwise provided in this Agreement, in the event that one or more of the Parties to this Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees, incurred in connection with any enforcement action.

XIV. NOTICES

14.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class:

Graham S.P. Hollis
GRAHAMHOLLIS APC
3555 Fifth Avenue
San Diego, CA 92103

Raul Perez
Capstone Law APC
1840 Century Park East, Suite 1840
Los Angeles, CA 90067

To PetSmart, Inc.:

Michelle Heverly
Littler Mendelson
50 W. San Fernando St., 15th Floor
San Jose, CA 95113

XV. OTHER MATTERS

15.1 Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement.

1 **15.2 Captions and Interpretations.** Paragraph titles or captions contained herein
2 are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
4 contractual and not merely a recital.

5 **15.3 Modification.** This Agreement may not be changed, altered, or modified,
6 except in writing and signed by the Parties hereto, and approved by the Court. This Agreement may
7 not be discharged except by performance in accordance with its terms or by a writing signed by all
8 of the Parties hereto.

9 **15.4 Integration Clause.** This Agreement contains the entire agreement between
10 the Parties relating to the Settlement and transaction contemplated hereby, and all prior or
11 contemporaneous agreements, understandings, representations, and statements, whether oral or
12 written and whether by a Party or such Party's legal counsel, are merged herein, including but not
13 limited to the Memorandum of Understanding. No rights hereunder may be waived except in
14 writing.

15 **15.5 Signatures of All Settlement Class Members Unnecessary to be Binding.**
16 It is agreed that, because the members of the Settlement Class are numerous, it is impossible or
17 impractical to have each Settlement Class Member execute this Agreement. The Notice will advise
18 all Settlement Class Members of the binding nature of the release provided herein and such shall
19 have the same force and effect as if this Agreement were executed by each Settlement Class
20 Member.

21 **15.6 Confidentiality Prior to Preliminary Approval.** With the exception of
22 communications among those who executed the Mediation Confidentiality Agreement on April 9,
23 2013, the Plaintiffs and Class Counsel agree not to discuss the Settlement amounts, the terms of the
24 Agreement, or any of the issues discussed during mediation or surrounding terms of the Settlement
25 Agreement or the amounts provided therein until the date of the filing of the Motion for Preliminary
26 Approval. Following the filing of the Motion for Preliminary Approval, Class Counsel will limit
27 publicity regarding this Settlement to a posting on its website of the Notice.
28

1 **15.7 Counterparts.** This Agreement may be executed in counterparts, and when
 2 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
 3 an original, and, when taken together with other signed counterparts, shall constitute one fully-
 4 signed Agreement, which shall be binding upon and effective as to all Parties.

5 **15.8 No Retaliation.** PetSmart agrees not to retaliate against any employee
 6 making a claim for proceeds under this Agreement, nor to take any action to encourage or
 7 discourage employees from participating in the Settlement Process.

8 **IT IS SO STIPULATED**

9
 10 **Dated:** November 12, 2014

PetSmart, Inc.

11
 12 
 13 David Lenhardt
 14 CEO PetSmart, Inc.

15 **Dated:**

**GRAHAMHOLLIS APC FOR GRAHAMHOLLIS
 APC, PLAINTIFFS DANETTE MOORE, LATRESA
 MYERS, ALANNA HARRISON, ALISA VALDEZ**

16
 17
 18 Attorneys for Plaintiffs/Lead Class Counsel

19 **Dated:**

**CAPSTONE LAW APC FOR CAPSTONE LAW APC
 AND PLAINTIFF JEANETTE NEGRETE**

20
 21 Pet Stylist Settlement Class Counsel

22
 23 **Dated:**

Little Mendelson, P.C.

24
 25
 26 Attorneys for PetSmart, Inc.

27 DBI/81127771.2

28 **CASE NO. 5:12-CV-03577-EJD**

32.

1 **15.7 Counterparts.** This Agreement may be executed in counterparts, and when
 2 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
 3 an original, and, when taken together with other signed counterparts, shall constitute one fully-
 4 signed Agreement, which shall be binding upon and effective as to all Parties.

5 **15.8 No Retaliation.** PetSmart agrees not to retaliate against any employee
 6 making a claim for proceeds under this Agreement, nor to take any action to encourage or
 7 discourage employees from participating in the Settlement Process.

8 IT IS SO STIPULATED

9
 10 Dated: PetSmart, Inc.

11
 12
 13 David Lenhardt
 14 CEO PetSmart, Inc.

15 Dated: 11-10-14 GRAHAMHOLLIS APC FOR GRAHAMHOLLIS
 16 APC, PLAINTIFFS DANETTE MOORE, LATRESA
 17 MYERS, ALANNA HARRISON, ALISA VALDEZ

18 Graham Hollis
 19 Attorneys for Plaintiffs/Lead Class Counsel

20 Dated: CAPSTONE LAW APC FOR CAPSTONE LAW APC
 21 AND PLAINTIFF JEANETTE NEGRETE

22 Pet Stylist Settlement Class Counsel

23
 24 Dated: 11.10.2014 Littler Mendelson, P.C.

25 Michelle Hever
 26 Attorneys for PetSmart, Inc.

27 DBI/81127771.2

28 CASE NO. 5:12-CV-03577-EJD

32.

15.7 Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Agreement, which shall be binding upon and effective as to all Parties.

15.8 No Retaliation. PetSmart agrees not to retaliate against any employee making a claim for proceeds under this Agreement, nor to take any action to encourage or discourage employees from participating in the Settlement Process.

IT IS SO STIPULATED

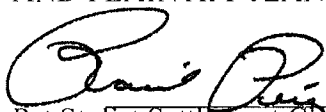
Dated: PetSmart, Inc.

David Lenhardt
CEO PetSmart, Inc.

Dated: GRAHAMHOLLIS APC FOR GRAHAMHOLLIS
APC, PLAINTIFFS DANETTE MOORE, LATRESA
MYERS, ALANNA HARRISON, ALISA VALDEZ

Attorneys for Plaintiffs/Lead Class Counsel

Dated: 11/10/2014 CAPSTONE LAW APC FOR CAPSTONE LAW APC
AND PLAINTIFF JEANETTE NEGRETE



Pet Stylist Settlement Class Counsel

Dated: Littler Mendelson, P.C.

Attorneys for PetSmart, Inc.

DBI/ 81127771.2

1 Dated: 11/10/14


Danette Moore, Plaintiff/Class Representative

2
3
4
5 Dated:

Latresa Myers, Plaintiff/Class Representative

6
7 Dated:

Alanna Harrison, Plaintiff/Class Representative

8
9
10 Dated:

Alisa Valdez, Plaintiff/Class Representative


11
12 Dated:

Jeanette Negrete, Class Representative for Pet
Stylist Settlement Class

1 Dated:

2 Danette Moore, Plaintiff/Class Representative

3
4 Dated:

5 
6 Latresa Myers, Plaintiff/Class Representative

7 Dated:

8 Alanna Harrison, Plaintiff/Class Representative

9
10 Dated:

11 Alisa Valdez, Plaintiff/Class Representative

12 Dated:

13 Jeanette Negrete, Class Representative for Pet
14 Stylist Settlement Class

1 Dated:

2 Danette Moore, Plaintiff/Class Representative

3
4 Dated:

5 Latesa Myers, Plaintiff/Class Representative

6
7 Dated: 11/19/2014

8 Alanna Harrison, Plaintiff/Class Representative

9
10 Dated:

11 Alisa Valdéz, Plaintiff/Class Representative

12 Dated:

13 Jeanette Negrete, Class Representative for Pet
14 Stylist Settlement Class

1 Dated:

2 Danette Moore, Plaintiff/Class Representative

3
4 Dated:

5 Latresa Myers, Plaintiff/Class Representative

6
7 Dated:

8 Alanna Harrison, Plaintiff/Class Representative

9
10 Dated: 11/10/14

11 Alisa Valdez, Plaintiff/Class Representative

12 Dated:

13 Jeanette Negrete, Class Representative for Pet
14 Stylist Settlement Class

1 Dated:

2 Danette Moore, Plaintiff/Class Representative

3
4 Dated:

5 Latesa Myers, Plaintiff/Class Representative

6
7 Dated:

8 Alanna Harrison, Plaintiff/Class Representative

9
10 Dated:

11 Alisa Valdez, Plaintiff/Class Representative

12 Dated: NOV 19th, 2014

13 Jeanette Negrete
14 Jeanette Negrete, Class Representative for Pet
15 Stylist Settlement Class
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EXHIBIT D

1 GRAHAMHOLLIS APC
 2 GRAHAM S.P. HOLLIS (SBN 120577)
 3 ghollis@grahamhollis.com
 4 MARTA MANUS (SBN 260132)
 5 mmanus@grahamhollis.com
 3555 Fifth Avenue
 San Diego, California 92103
 Telephone: 619.692.0800
 Facsimile: 619.692.0822

6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10 DANETTE M. MOORE, LATRESA MYERS,
 11 ALANNA HARRISON and ALISA VALDEZ
 12 individually and on behalf of others similarly
 13 situated,

14 Plaintiffs,

15 v.

16 PETSMAART, INC, and Does 1 through 100,
 17 inclusive,

18 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF DANETTE MOORE IN
 SUPPORT OF PLAINTIFFS' UNOPPOSED
 MOTION FOR (1) PROVISIONAL
 CERTIFICATION OF SETTLEMENT CLASS;
 (2) PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT; (3) APPROVAL OF
 CLASS NOTICE AND NOTICE PLAN; (4)
 APPOINTMENT OF CLASS COUNSEL AND
 CLASS REPRESENTATIVES; AND (5)
 SETTING A FINAL APPROVAL HEARING**

Date: **March 7, 2014**
 Time: 9:00 a.m.
 Courtroom: 4 –5th Floor
 Judge: Hon. Edward J. Davila

Trial Date: None set

22 ///

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25 ///

26 ///

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1 I, Danette Moore, state and declare:

2 1. I make this Declaration in support of Plaintiffs' motion for preliminary approval of class
3 action settlement. The contents of which are based upon my personal knowledge and if called as a
4 witness, I could and would testify as to the truthfulness of its contents.

5 2. I am one of the four named Plaintiffs in the above captioned case, *Moore, et al v.*
6 *PetSmart, Inc.*, Case No. 12-CV-03577(EJD). I was employed by PetSmart, Inc. ("PetSmart" or
7 "Defendant") from November 5, 2007 to approximately April 2011. During my employment with
8 PetSmart I have held the position of cashier, bather and groomer (also referred to as "Pet Stylist") in
9 PetSmarts San Leandro store location.

10 3. I believe that I, and other non-exempt and Pet Stylist employees of Defendant, was
11 subjected to unlawful wage and hour and seating practices at PetSmart. As a result, I decided to file a
12 lawsuit against Defendant for these practices. In doing so, I decided that I wanted to pursue relief not
13 only for myself but other employees of Defendant so that, through my action, I could try to make things
14 right and for the benefit of all other non-exempt and Pet Stylist employees who suffered from the same
15 claims. In doing so I agreed to consider the interests of all other employees affected by the claims
16 alleged just as I would consider my own interests.

17 4. In bringing this action, I knew that I was taking a big risk in filing a claim against a
18 former employer. I knew, for example, that my name could easily be located on the internet or through
19 other searches and that any prospective employer may find out that I had sued my former employer. I
20 also knew that by pursuing claims on behalf of others and acting as their representative, I could not put
21 my interests and claims above those of other employees of Defendant. I also knew and agreed to
22 participate actively in this case even if it meant having to devote many hours to investigations, meetings,
23 depositions, discovery and mediations. Even though I knew all of these things and that I was taking a
24 big risk, I knew I had to do what I believe was right, that is, pursue claims on behalf of other employees
25 of Defendant and attempt to change the wage and hour and safety practices for non-exempt and Pet
26 Stylist employees at PetSmart for them. As explained below, I am extremely pleased with the terms of
27 the settlement and the policy changes being made at PetSmart and settlement monies obtained through
28 the proposed settlement.

GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

5. Well before the action was filed through the present date, I have been a very active participant in this action and the resulting settlement. For example, I have actively participated in numerous in-person and telephonic investigative and strategy meetings with my counsel; have been in constant contact with my lawyer's office as the need arises; remained in constant contact with the other three named plaintiffs and other class members regarding the status of the case, factual investigation, and strategy; reviewed documents and information that was exchanged in this action and shared factual information with my counsel regarding the practices, policies and procedures of Defendant; participated in informal and formal discovery; traveled to (approximately two hours roundtrip) and participated in my half day deposition; reviewed my deposition transcript and all of its exhibits for accuracy; traveled to (approximately two hours roundtrip) and participated in a full day mediation session and post-mediation settlement discussions that ultimately lead to the resolution of this matter; participated in the settlement process including reviewing and executing the settlement agreement, providing my input and preparing this declaration. All in all, through the claims I have brought against PetSmart and assisting in the resulting settlement agreement, I have spent in excess of 80 hours for the benefit of other non-exempt employees and Pet Stylists.

6. Through the settlement we have achieved not only considerable monetary relief for Class Members, but substantial policy changes at PetSmart that were important to me in bringing this lawsuit as a class action. In bringing this lawsuit, it was important to me that all grooming employees of Defendant are provided a safe working environment. This was important because I have suffered medically diagnosed complications affecting my back in performing grooming duties as a Pet Stylists for Defendant as result of their seating policy. Through this litigation and the terms of the proposed settlement, Defendant has agreed to hire a consultant specializing in safety and ergonomic issues to review its current policies and ensure it provides it employees with a safe working environment. Also, Defendant has agreed to provide grooming tools for all of its Pet Stylists, revise its commission structure to ensure grooming employees are being paid for all hours worked at their regular rate of pay, and ensure that non-exempt employees are being paid for hours worked off-the-clock. These are major changes that provide additional monetary and other benefits to class members, as well as, future employees of Defendant. In light of the monetary and policy changes we have achieved through the

1 the employees of PetSmart. Considering the amount of work, hours and ultimate service I have
2 dedicated to the pursuit of money damages and policy changes on behalf of other employees, the fact
3 that I am agreeing to a broader release of claims than class members in order to achieve this settlement,
4 and the financial and professional risks I took by pursuing a lawsuit against a former employer I believe
5 the requested \$5,000.00 service award is very fair and reasonable.

6 8. Having been so actively involved in bringing these claims and assisting in resolution of
7 the claims and having read the settlement agreement, it is my opinion that the proposed settlement
8 achieved is fair, adequate and reasonable.

9 9. I have been extremely pleased with my attorneys' work on this case. I found that they
10 worked effectively and very efficiently to attain the excellent results achieved for the benefit of all Class
11 Members.

12 10. I respectfully request the Court grant preliminary approval of the settlement, appoint
13 Class Counsel, appoint myself and the other three plaintiffs as Class Representatives, and do everything
14 else that needs to be done to finalize this settlement. I am committed to this case and will continue to
15 make myself available as needed throughout the course of the settlement process.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct.

18 Executed this 27th day of January, 2014, at Hayward, California.


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20 
21 Danette M. Moore
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27
28

EXHIBIT E

1 GRAHAMHOLLIS APC
 2 GRAHAM S.P. HOLLIS (SBN 120577)
 3 ghollis@grahamhollis.com
 4 MARTA MANUS (SBN 260132)
 5 mmanus@grahamhollis.com
 3555 Fifth Avenue
 San Diego, California 92103
 Telephone: 619.692.0800
 Facsimile: 619.692.0822

6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10 DANETTE M. MOORE, LATRESA MYERS,
 11 ALANNA HARRISON and ALISA VALDEZ
 individually and on behalf of others similarly
 situated,

12 Plaintiffs,

13 v.

14 PETSMART, INC, and Does 1 through 100,
 15 inclusive,

16 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF LATRESA MYERS IN
 SUPPORT OF PLAINTIFFS' UNOPPOSED
 MOTION FOR (1) PROVISIONAL
 CERTIFICATION OF SETTLEMENT CLASS;
 (2) PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT; (3) APPROVAL OF
 CLASS NOTICE AND NOTICE PLAN; (4)
 APPOINTMENT OF CLASS COUNSEL AND
 CLASS REPRESENTATIVES; AND (5)
 SETTING A FINAL APPROVAL HEARING**

Date: March 7, 2014
Time: 9:00 a.m.
Courtroom: 4 –5th Floor
Judge: Hon. Edward J. Davila

Trial Date: None set

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 I, Latresa Myers, state and declare:

2 1. I am one of the four named Plaintiffs in this case, *Moore, et al v. PetSmart, Inc.*, Case
3 No. 12-CV-03577(EJD). I started working for PetSmart on April 27, 1998 until April of 2011 when I
4 was told by PetSmart that I could not continue to work for them. During my employment with PetSmart
5 I worked in several positions. I worked as a bather, a groomer trainee, and finally a groomer (also
6 referred to as "Pet Stylist") in PetSmart's San Leandro store.

7 2. I make this Declaration in support of Plaintiffs' motion for preliminary approval of class
8 action settlement. This information is from my personal knowledge and if called as a witness, I would
9 testify as to the truthfulness.

10 3. I believe that hourly paid employees of PetSmart, including myself, were subjected to
11 illegal practices at PetSmart. As a result, I hired a lawyer and decided that if it was necessary, would
12 file a lawsuit against PetSmart. I wanted to make things right for the benefit of all other Pet Stylists and
13 other employees who suffered from the same illegal actions, and agreed to consider the interests of all
14 other employees affected by the claims in the lawsuit just as I would consider my own interests. I hoped
15 that by bringing this lawsuit I could change PetSmart's practices for the benefit of all of their hourly
16 paid employees and to obtain compensation for me and other hourly employees of PetSmart for their
17 illegal practices.

18 4. I realized that by bringing this lawsuit, I was taking a big risk in filing a claim against a
19 former employer. I knew that by pursuing claims on behalf of others and acting as their representative, I
20 could not put my interests and claims above those of other employees of PetSmart. I also knew and
21 agreed to participate actively in this case even though it meant having to devote many hours to
22 investigations, meetings, having my deposition taken, answering questions and attending mediations.
23 Most importantly, I knew that my name could easily be located on the internet or through other online
24 searches and that any prospective employer may find out that I had sued my former employer. Despite
25 knowing the risks and challenges that bringing this lawsuit would involve, I knew I had to do what was
26 right and pursue claims on behalf of other employees of PetSmart and attempt to change the pay
27 practices for Pet Stylists and other employees. I am extremely pleased with the terms of the settlement,
28 the policy changes being made at PetSmart and the money obtained for the employees affected by

GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 PetSmart's practices through the proposed settlement.

2 5. I have been very involved in this lawsuit and the settlement the other plaintiffs, myself,
3 and our lawyers were able to achieve. Through the claims I brought against PetSmart and assisting in
4 reaching the proposed settlement, I have spent in excess of 85 hours for the benefit of myself as well as
5 the other affected employees and Pet Stylists. Even before the complaint was filed by my attorneys, I
6 actively participated in this case. For example, I took part in many in-person and telephonic interviews
7 and strategy meetings with my attorneys; searched for documents requested by my attorneys; have been
8 in continual contact with my lawyer's office whenever they needed me; remained in regular contact with
9 the other three plaintiffs and several other class members regarding the status of the case, factual
10 investigation, and strategy; reviewed documents and information that was exchanged in the lawsuit and
11 shared information with my lawyers regarding the company practices, policies and procedures of
12 PetSmart; participated in informal and formal discovery; traveled to (approximately four hours roundtrip
13 in traffic) and participated in my deposition in San Francisco; reviewed my deposition transcript and all
14 of its exhibits for accuracy; traveled to (approximately four hours roundtrip) and participated in a full
15 day mediation session in San Francisco and post-mediation settlement discussions that lead to the
16 settlement; participated in the procedures after the mediation including reviewing the settlement
17 agreement, providing my input and preparing this declaration.

18 6. Through the settlement, we have achieved everything I had hoped for. PetSmart has
19 agreed to provide grooming tools for all of its Pet Stylists, revise its commission structure so that all the
20 groomers are being paid for all of the time they are working and made sure that employees are being
21 paid for the time that they have to assist customers when they have clocked out. These are major
22 changes that provide additional money and other benefits to class members, as well as, future employees
23 of PetSmart. I am very proud for having made the decision to bring this lawsuit on behalf of all Pet
24 Stylists and other employees. We have also made PetSmart agree to pay ten million dollars to
25 compensate their employees and pay all of the costs and expenses, and lawyer fees in bringing this case.
26 These are the reasons I brought this lawsuit as a class action, and am glad we have achieved such great
27 results.

28 7. For the work and dedication I have put into this case for the benefit of all other hourly

1 employees of PetSmart, I am requesting a service award of \$5,000. From the time I decided to bring this
 2 class action case against PetSmart, I have always placed and the other Pet Stylists employees' interests
 3 above my own. Through my service, and that of the other three plaintiffs, we have achieved enormous
 4 settlement amount and policy changes that benefit all the employees of PetSmart. I believe the
 5 requested \$5,000.00 service award is very fair and reasonable based on the amount of work, hours and
 6 service I have dedicated to the pursuit of policy changes and money damages on behalf of other
 7 employees, the fact that I am agreeing to a broader release of claims than class members in order to
 8 achieve this settlement, and the financial and professional risks I took by pursuing a lawsuit against a
 9 former employer.

10 8. Having read the settlement agreement and been so actively involved in this case and
 11 assisting in the resolution of the claims, it is my opinion that the proposed settlement we have reached is
 12 fair, adequate and reasonable.

13 9. I am very pleased with my attorneys' work on our case. I believe they worked very
 14 effectively and efficiently to get the excellent results achieved for the benefit of all Class Members.

15 10. I respectfully request the Court grant preliminary approval of the settlement, appoint
 16 Class Counsel, appoint myself and the other three plaintiffs as Class Representatives, and do everything
 17 else that needs to be done to finalize this settlement. I am committed to this case and will continue to
 18 make myself available as needed throughout the settlement process.

19
 20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
 21 true and correct.

22 Executed this 27 th day of January, 2014, at Modesto, California.

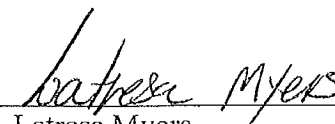
23
 24 
 25 Latresa Myers

EXHIBIT F

1 GRAHAMHOLLIS APC
 GRAHAM S.P. HOLLIS (SBN 120577)
 2 ghollis@grahamhollis.com
 MARTA MANUS (SBN 260132)
 3 mmanus@grahamhollis.com
 3555 Fifth Avenue
 4 San Diego, California 92103
 Telephone: 619.692.0800
 5 Facsimile: 619.692.0822

6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10 DANETTE M. MOORE, LATRESA MYERS,
 ALANNA HARRISON and ALISA VALDEZ
 11 individually and on behalf of others similarly
 situated,

12 Plaintiffs,

13 v.

14 PETSMART, INC, and Does 1 through 100,
 15 inclusive,

16 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF ALANNA HARRISON IN
 SUPPORT OF PLAINTIFFS' UNOPPOSED
 MOTION FOR (1) PROVISIONAL
 CERTIFICATION OF SETTLEMENT CLASS;
 (2) PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT; (3) APPROVAL OF
 CLASS NOTICE AND NOTICE PLAN; (4)
 APPOINTMENT OF CLASS COUNSEL AND
 CLASS REPRESENTATIVES; AND (5)
 SETTING A FINAL APPROVAL HEARING**

Date: **March 7, 2013**
 Time: 9:00 am
 Courtroom: 4 –5th Floor
 Judge: Hon. Edward J. Davila

Trial Date: None set

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 I, Alanna Harrison, state and declare:

2 1. I am one of the four named Plaintiffs in this case, *Moore, et al v. PetSmart, Inc.*, Case
3 No. 12-CV-03577(EJD). I first began working for PetSmart on September 29, 2008 and still work for
4 PetSmart as a groomer (also referred to as "Pet Stylist") in PetSmart's San Leandro store.

5 2. I make this Declaration in support of Plaintiffs' motion for preliminary approval of the
6 class action settlement. This information is from my personal knowledge and I would testify as to the
7 truthfulness if called as a witness.

8 3. I believe that hourly paid employees of PetSmart, including myself, were subjected to
9 illegal pay practices at PetSmart. As a result, I hired GrahamHollis, APC to be my attorneys and
10 decided to file a lawsuit against PetSmart. When I made this decision, I feared that I would be retaliated
11 against by PetSmart and my managers for having brought a lawsuit against my current employer. I
12 wanted to do what was right. That is why I agreed to file this lawsuit and consider the interests of all
13 other employees affected by the claims in the lawsuit just as I would consider my own interests. I hoped
14 that this lawsuit would make PetSmart's change its practices for the benefit of all of their hourly paid
15 employees and to obtain compensation for me and other hourly employees of PetSmart for their illegal
16 practices.

17 4. I realized that by bringing this lawsuit, I was taking a huge risk in filing a claim against
18 my current employer and that PetSmart or my manager would retaliate against me for doing so. I knew
19 that my name could easily be located on the internet or through other online searches and that any future
20 employer may find out that I had sued my current employer. I also knew that if we were not successful,
21 I might have to pay out of my own pocket PetSmart's attorney's fees. Even though I faced these risks, I
22 made the decision to move forward with this lawsuit. When I agreed to file the lawsuit I also agreed to
23 participate actively in this case even though it meant having to devote countless hours to searching for
24 documents, investigations, meetings, having my deposition taken, answering questions and attending
25 mediations. I knew that by pursuing claims on behalf of others I had to put their interest above my own.
26 Despite knowing the risks and challenges this lawsuit would involve, I knew I had to do what was right
27 and pursue claims on behalf of other employees of PetSmart and attempt to change the pay practices for
28 Pet Stylists and other employees. I am very pleased with the terms of the settlement, the policy changes

GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 being made at PetSmart and the large amount of money obtained for the employees affected by
2 PetSmart's practices through the proposed settlement.

3 5. I have been very involved in this lawsuit and the settlement myself, my attorneys and the
4 other three plaintiffs have been able to achieve. Even before the complaint was filed by my attorneys, I
5 actively participated in this case and have spent in excess of 65 hours for the benefit of other affected
6 employees and Pet Stylists and myself up to this point in the lawsuit. For example, I took part in many
7 in-person and telephonic interviews and strategy meetings with my attorneys; searched for documents
8 requested by my attorneys; have been in continual contact with my lawyer's office whenever they
9 needed me; remained in regular contact with the other three plaintiffs and several other class members
10 regarding the status of the case, factual investigation, and strategy; reviewed documents and information
11 that was exchanged in the lawsuit and shared information with my lawyers regarding the company
12 practices, policies and procedures of PetSmart; participated in informal and formal discovery; traveled to
13 (approximately on two hours roundtrip in traffic) and participated in my deposition; reviewed my
14 deposition transcript and all of its exhibits for accuracy; traveled to (approximately two hours roundtrip)
15 and participated in a full day mediation session in San Francisco and post-mediation settlement
16 discussions that lead to the settlement; participated in the procedures after the mediation including
17 reviewing the settlement agreement, providing my input and preparing this declaration.

18 6. We have achieved everything I had hoped for through the settlement. PetSmart has
19 agreed to pay ten million dollars to affected employees, provide grooming tools for all of its Pet Stylists,
20 revise its commission structure so that groomers are being paid for all of the time they are working and
21 to make sure that employees are being paid for the time that they have to assist customers when they
22 have clocked out. These are major changes that provide substantial money and other benefits to class
23 members, as well as future employees of PetSmart. I am very happy I made the decision to bring this
24 lawsuit on behalf of all Pet Stylists and other employees. I am very proud for being able to achieve such
25 great results in bringing this lawsuit.

26 7. For the work and dedication I have put into this case for the benefit of all other hourly
27 employees of PetSmart, as well as, the risk I took in bringing a lawsuit against my current employer I
28 am requesting a service award of \$10,000. From the time I decided to bring this class action case

1 against PetSmart, I have always placed the other Pet Stylists employees' interests above my own.
2 Through my service, and that of the other three plaintiffs, we have achieved a large settlement amount
3 and important policy changes that benefit all the employees of PetSmart. Based on the amount of work,
4 hours and service I have dedicated to the pursuit of policy changes and money damages on behalf of
5 other employees, the fact that I am agreeing to a broader release of claims than class members in order
6 to achieve this settlement, and the financial and professional risks I took by pursuing a lawsuit against a
7 current employer that the requested \$10,000 service award is very fair and reasonable.

8 8. Having read the settlement agreement and been so actively involved in this case and
9 assisting in the resolution of the claims, it is my opinion that the proposed settlement we have reached is
10 fair, adequate and reasonable.

11 9. I am very happy with my attorneys' work on our case. I believe they worked effectively
12 and efficiently to get the excellent results achieved for the benefit of all Class Members.

13 10. I respectfully request the Court grant preliminary approval of the settlement, appoint
14 Class Counsel, appoint myself and the other three plaintiffs as Class Representatives, and do everything
15 else that needs to be done to finalize this settlement. I am committed to this case and will continue to
16 make myself available as needed throughout the settlement process.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct.

19 Executed this 30th day of January, 2014, at Oakland, California.

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23 Alanna Harrison
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EXHIBIT G

1 GRAHAMHOLLIS APC
 2 GRAHAM S.P. HOLLIS (SBN 120577)
 3 ghollis@grahamhollis.com
 4 MARTA MANUS (SBN 260132)
 5 mmanus@grahamhollis.com
 3555 Fifth Avenue
 San Diego, California 92103
 Telephone: 619.692.0800
 Facsimile: 619.692.0822

6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10 DANETTE M. MOORE, LATRESA MYERS,
 11 ALANNA HARRISON and ALISA VALDEZ
 12 individually and on behalf of others similarly
 13 situated,

14 Plaintiffs,

15 v.

16 PETSMART, INC, and Does 1 through 100,
 17 inclusive,

18 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF ALISA VALDEZ IN
 SUPPORT OF PLAINTIFFS' UNOPPOSED
 MOTION FOR (1) PROVISIONAL
 CERTIFICATION OF SETTLEMENT CLASS;
 (2) PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT; (3) APPROVAL OF
 CLASS NOTICE AND NOTICE PLAN; (4)
 APPOINTMENT OF CLASS COUNSEL AND
 CLASS REPRESENTATIVES; AND (5)
 SETTING A FINAL APPROVAL HEARING**

Date: **March 7, 2014**
 Time: 9:00 a.m.
 Courtroom: 4 – 5th Floor
 Judge: Hon. Edward J. Davila

Trial Date: None set

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 I, Alisa Valdez, state and declare:

2 1. I am one of the four named Plaintiffs in this case, *Moore, et al v. PetSmart, Inc.*, Case
3 No. 12-CV-03577(EJD). I started working for PetSmart on October 10, 2005 and am currently still
4 employed by PetSmart as a groomer (also referred to as "Pet Stylist") in PetSmart's San Leandro store.

5 2. I make this Declaration in support of Plaintiffs' motion for preliminary approval of the
6 class action settlement. This information is from my personal knowledge and I would testify as to the
7 truthfulness if called as a witness.

8 3. I believe that hourly paid employees of PetSmart, including myself, were subjected to
9 illegal practices at PetSmart. As a result, I hired a lawyer and decided that if it was necessary, I would
10 file a lawsuit against PetSmart. I feared that I would be retaliated against by PetSmart and my managers
11 for having brought a lawsuit against my current employer, but wanted to make things right for the
12 benefit of all other Pet Stylists and other employees who suffered from the same illegal actions. I agreed
13 to filing this lawsuit and to consider the interests of all other employees affected by the claims in the
14 lawsuit just as I would consider my own interests. I hoped that by bringing this lawsuit I could change
15 PetSmart's practices for the benefit of all of their hourly paid employees and to get money owed to me
16 and other hourly employees of PetSmart for their illegal practices.

17 4. I realized that by bringing this lawsuit, I was taking a huge risk of retaliation by PetSmart
18 in filing a claim against my current employer. I knew that my name could easily be located on the
19 internet or through other online searches and that any future employer may find out that I had sued my
20 current employer. I also knew that if we were not successful, I might have to pay out of my own pocket
21 PetSmart's attorney's fees. Knowing all of this, I still made the decision to do what was right and
22 agreed to participate actively in this case even though it meant having to devote many hours to
23 investigations, meetings, having my deposition taken, answering questions and attending mediation. I
24 knew that by pursuing claims on behalf of others I had to put their interest above my own. Despite
25 knowing the risks and challenges this lawsuit would involve, I knew I had to do what I believe was right
26 and pursue claims on behalf of other employees of PetSmart and attempt to change the pay practices for
27 Pet Stylists and other employees. I am very pleased with the terms of the settlement, the policy changes
28 being made at PetSmart and the money obtained for the employees affected by PetSmart's practices

GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 through the proposed settlement.

2 5. I have been very involved in this lawsuit and the settlement we have achieved and have
3 spent in excess of 65 hours for the benefit of other affected employees and Pet Stylists and myself up to
4 this point in the lawsuit. Even before the complaint was filed by my attorneys, I actively participated in
5 this case. For example, I took part in many in-person and telephonic interviews and strategy meetings
6 with my attorneys; searched for documents requested by my attorneys; have been in continual contact
7 with my lawyer's office whenever they needed me; remained in regular contact with the other three
8 plaintiffs and several other class members regarding the status of the case, factual investigation, and
9 strategy; reviewed documents and information that was exchanged in the lawsuit and shared information
10 with my lawyers regarding the company practices, policies and procedures of PetSmart; participated in
11 informal and formal discovery; traveled to (approximately on two hours roundtrip in traffic) and
12 participated in my deposition; reviewed my deposition transcript and all of its exhibits for accuracy;
13 traveled to (approximately two hours roundtrip) and participated in a full day mediation session in San
14 Francisco and post-mediation settlement discussions that lead to the settlement; participated in the
15 procedures after the mediation including reviewing the settlement agreement, providing my input and
16 preparing this declaration.

17 6. We have achieved everything I had hoped for through the settlement. PetSmart has
18 agreed to revise its commission structure so that all the groomers are being paid for all of the time they
19 are working and made sure that employees are being paid for the time that they have to assist customers
20 when they have clocked out, and provide grooming tools for all of its Pet Stylists. These are major
21 changes that provide additional money and other benefits to class members, as well as, future employees
22 of PetSmart. I am very delighted I made the decision to bring this lawsuit on behalf of all Pet Stylists
23 and other employees. We have also gotten PetSmart to agree to pay ten million dollars to compensate
24 their employees and pay all of the costs and expenses, and lawyer fees in bringing this case. I brought
25 this lawsuit as a class action to accomplish these goals, and I am glad we have achieved such great
26 results.

27 7. For the work and dedication I have put into this case for the benefit of all other hourly
28 employees of PetSmart, as well as, the risk I took in bringing a lawsuit against my current employer I

1 am requesting a service award of \$10,000. From the time I decided to bring this class action case
2 against PetSmart, I have always placed and the other Pet Stylists employees' interests above my own.
3 Through my service, and that of the other three plaintiffs, we have achieved a large settlement amount
4 and important policy changes that benefit all the employees of PetSmart. I believe the requested
5 \$10,000.00 service award is very fair and reasonable based on the amount of work, hours and service I
6 have dedicated to the pursuit of policy changes and money damages on behalf of other employees, the
7 fact that I am agreeing to a broader release of claims than class members in order to achieve this
8 settlement, and the financial and professional risks I took by pursuing a lawsuit against my current
9 employer.

10 8. Having read the settlement agreement and been so actively involved in this case and
11 assisting in the resolution of the claims, it is my opinion that the proposed settlement we have reached is
12 fair, adequate and reasonable.

13 9. I am very happy with my attorneys' work on our case. I believe they worked effectively
14 and efficiently to get the excellent results achieved for the benefit of all Class Members.

15 10. I respectfully request the Court grant preliminary approval of the settlement, appoint
16 Class Counsel, appoint myself and the other three plaintiffs as Class Representatives, and do everything
17 else that needs to be done to finalize this settlement. I am committed to this case and will continue to
18 make myself available as needed throughout the settlement process.

19
20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct.

22 Executed this 27th day of January, 2014, at Oakland, California.


23
24
25 
26 Alisa Valdez

EXHIBIT H

1 GRAHAMHOLLIS APC
 2 GRAHAM S.P. HOLLIS (SBN 120577)
 3 ghollis@grahamhollis.com
 4 MARTA MANUS (SBN 260132)
 5 mmanus@grahamhollis.com
 3555 Fifth Avenue
 San Diego, California 92103
 Telephone: 619.692.0800
 Facsimile: 619.692.0822

6 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

11 DANETTE M. MOORE, LATRESA MYERS,
 12 ALANNA HARRISON and ALISA VALDEZ
 individually and on behalf of others similarly
 situated,

13 Plaintiffs,

14 v.

15 PETSMART, INC, and Does 1 through 100,
 16 inclusive,

17 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF ALISA VALDEZ IN
 SUPPORT OF PLAINTIFFS' SUPPLEMENTAL
 BRIEF IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY APPROVAL**

Date: April 3, 2014
 Time: 1:30 a.m.
 Courtroom: 4 –5th Floor
 Judge: Hon. Edward J. Davila

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 I, Alisa Valdez, state and declare:

2 1. I am one of the four named Plaintiffs in this case, *Moore, et al v. PetSmart, Inc.*, Case
3 No. 12-CV-03577(EJD). I make this Declaration in support of Plaintiffs' Supplemental Brief in support
4 of Plaintiffs' Motion for Preliminary Approval of the class action settlement, which was filed on January
5 31, 2014. This information is from my personal knowledge and I would testify as to the truthfulness if
6 called as a witness.

7 2. I started working for PetSmart on October 10, 2005 and am currently still employed by
8 PetSmart as a groomer (also called a "Pet Stylist") in PetSmart's San Leandro store. When I decided to
9 file this lawsuit, I was employed by PetSmart as a Pet Stylist. I became a Pet Stylist in mid-2006 after
10 attending PetSmart's groomer training academy. I knew that filing a lawsuit against my current
11 employer was a big risk and that I might be fired or somehow retaliated against by my supervisor or
12 someone else at PetSmart. Although I was very worried about being retaliated against, I decided that I
13 wanted to file the lawsuit. The reason I agreed to take this risk was because I felt that the issues that me
14 and the other PetSmart employees were dealing with at work were not going to be fixed unless I did
15 something. I decided to risk my job because I thought it would be worth it in the long run and I wanted
16 things at work to get better for me and everyone else I worked with.

17 3. Prior to filing the lawsuit, I spent several months helping my lawyers investigate the
18 claims by meeting with my lawyers, regularly communicating with my lawyers on the phone and
19 through email, searching for documents, and providing information about my co-workers and
20 PetSmart's employment practices.

21 4. Once the lawsuit was filed, I was a bit nervous and worried that my supervisor would
22 pick on me more than others and watch my every move because I filed the lawsuit, which I believe may
23 have happened. I recall one time when my grooming salon manager named Vilma changed my work
24 schedule and took a day off of my weekly work schedule for no apparent reason. I didn't understand
25 why my schedule was suddenly changed without any explanation so I asked my store manager,
26 Candace. Candace told me that it was done because Vilma said that I had an attitude. This was not true
27 because nothing had happened between Vilma and I that would make Vilma say such a thing. The store
28 manager, Candace, changed my schedule back to my regular weekly schedule. I did end up feeling like I

GRAHAM HOLLIS APC
3555 FIFTH AVENUE
SAN DIEGO, CALIFORNIA 92103

1 was being singled out because the managers never change anyone's schedule without first talking to
2 them and this was an unusual occurrence. On another occasion, my manger asked me to sign a yellow
3 slip when a customer was refunded their money for a groom job that I performed. This was also unusual
4 because no one else ever had to sign anything if a customer was refunded their money for a groom.
5 Although I was not fired, I did end up feeling like I had to watch my every move and be very careful
6 because I was under a microscope and being more closely watched than my co-workers, which I think
7 was the result of this lawsuit.

8 5. I've spent a lot of time working on this case with my lawyers. In March 2013, I had my
9 deposition taken by PetSmart in San Francisco. The day before my deposition, I had to travel from my
10 home in Oakland to San Francisco to meet with my lawyers to prepare for my deposition. This meeting
11 lasted several hours. On the day of my deposition, I once again traveled from Oakland to San Francisco
12 and stayed all day for my deposition. I also attended the mediation in April 2013 in Oakland. I spent
13 the day at the mediation with my lawyers, the other class representatives, and the mediator. The
14 mediator asked us several questions about our work at PetSmart.

15 6. At the mediation, it was explained to me that we were only at the mediation to deal with
16 the class action claims and that we were not negotiating anything related to my individual claims against
17 PetSmart. When I was told about the request for a service award of \$10,000, I understood that the
18 service award was for all of the work I had done in helping my lawyers settle the class action claims. I
19 also understood that I still have my individual claims against PetSmart, which may or may not be settled
20 and might end up going to trial.

21 7. I have spent several years working on this case with my lawyers. I first met my lawyer,
22 Graham Hollis in mid-2011. Over the past three years since the investigation into this case first started,
23 I have been committed to helping my lawyers in any way possible and have made myself available to
24 my lawyers and easily accessible to help with whatever needs to be done in the case.

25 8. I knew that by filing this lawsuit, I was taking a big risk that could negatively affect my
26 employment with PetSmart or that I might lose my job. I also knew that if we didn't win the lawsuit, I
27 might have to pay for PetSmart's attorney's fees. I was aware of all of all of the risks but I still decided
28 to pursue this lawsuit and have actively participated in this lawsuit from day one. I am committed to

1 making sure this lawsuit ends with a good result for all of the PetSmart employees.

2 9. As explained in my prior declaration in support of Plaintiffs' Motion for Preliminary
3 Approval, I have spent a great deal of time, more than 65 hours, helping my lawyers in this lawsuit. I
4 think my efforts and all of the time I have invested in this case as well as the fact that I risked my current
5 employment for the sake of this lawsuit justify my request for a service award in the amount of \$10,000.
6 I understand that the amount awarded to me as a service award is up to the Court and is not in lieu of
7 any amount I may ultimately get for my individual claims against PetSmart.

8 10. I respectfully request the Court grant preliminary approval of the settlement, appoint
9 Class Counsel, appoint myself and the other three plaintiffs as Class Representatives, and grant the
10 requests for the service awards, and do everything else that needs to be done to finalize this settlement. I
11 am committed to this case and will continue to make myself available as needed throughout the
12 settlement process.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

16 Executed this 25th day of March, 2014, at Oakland, California.

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20 Alisa Valdez
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EXHIBIT I

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6 Attorneys for Plaintiffs

7
 8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10 DANETTE M. MOORE, LATRESA MYERS,
 11 ALANNA HARRISON and ALISA VALDEZ
 individually and on behalf of others similarly
 situated,

12 Plaintiffs,

13 v.

14 PETSMART, INC, and Does 1 through 100,
 15 inclusive,

16 Defendants.

Case No.: 12-CV-03577 EJD

**DECLARATION OF ALANNA HARRISON IN
 SUPPORT OF PLAINTIFFS' SUPPLEMENTAL
 BRIEF IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY APPROVAL**

Date: April 3, 2013
 Time: 1:30 am
 Courtroom: 4 – 5th Floor
 Judge: Hon. Edward J. Davila

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1 I, Alanna Harrison, state and declare:

2 1. I am one of the four named Plaintiffs in this case, *Moore, et al v. PetSmart, Inc.*, Case
3 No. 12-CV-03577(EJD). I make this Declaration in support of Plaintiffs' Supplemental Brief in support
4 of Plaintiffs' Motion for Preliminary Approval of the class action settlement, which was filed on January
5 31, 2014. This information is from my personal knowledge and I would testify as to the truthfulness if
6 called as a witness.

7 2. I first began working for PetSmart on September 29, 2008 as a groomer (also referred to
8 as "Pet Stylist") in PetSmart's San Leandro store. Although I recently left PetSmart, I was employed as
9 a Pet Stylist when this lawsuit was filed. I knew that filing a lawsuit against a current employer was a
10 big risk and that there was a chance that I might be fired or somehow retaliated against. Even though I
11 was nervous about filing a lawsuit against PetSmart, I thought it was important to do so because of the
12 way they treated me and the other employees. I decided to risk my job because I thought it would be
13 worth it in the long run and I wanted things at work to get better for me and everyone else I worked
14 with.

15 3. Before the lawsuit was filed, I spent a lot of time helping my lawyers with the
16 investigation of the claims. I regularly talked to my lawyers, searched for documents, and provided
17 information about other employees they could contact as well as information about PetSmart's
18 employment practices.

19 4. After the lawsuit was filed, I felt a nervous and worried at work because I thought that
20 my managers and co-workers might know about the lawsuit. I thought that my manager might single me
21 out or watch me more closely than the other employees. I think this may have happened because I
22 remember one time when my salon manager, Vilma, change mine and Alisa Valdez's work schedules
23 without any explanation. She took away a day from both our schedules and told the store manager that
24 it was because we had an attitude. There was nothing that happened for Vilma to accuse us of having an
25 attitude with her. Although the day was put back on our schedules, I think this may have happened
26 because Alisa and I are two of the Plaintiffs in this lawsuit. Although I was not fired, I did feel like I
27 had to be extra careful at work and worried that I could lose my job at any moment and that I was being
28 scrutinized more than other employees.

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1 5. Over the course of the past three years, since this lawsuit was being investigated, I have
2 spent a lot of time working on this case with my lawyers. In March 2013, I had my deposition taken by
3 PetSmart in San Francisco. The day before my deposition, I had to drive from my home in Oakland to
4 San Francisco to meet with my lawyers to prepare for my deposition. This meeting lasted several hours.
5 On the day of my deposition, I once again drove from Oakland to San Francisco and stayed all day for
6 my deposition. I also attended the mediation in April 2013 in Oakland. I spent the day at the mediation
7 with my lawyers, the other class representatives, and the mediator. The mediator asked us several
8 questions about our work at PetSmart.

9 6. At the mediation, it was explained to me that we were only at the mediation to deal with
10 the class action claims and that we were not negotiating anything related to my individual claims against
11 PetSmart. When I was told about the request for a service award of \$10,000, I understood that the
12 service award was for all of the work I had done in helping my lawyers settle the class action claims. I
13 also understood that I still have my individual claims against PetSmart, which may or may not be settled
14 and might end up going to trial.

15 7. I have spent several years working on this case with my lawyers. I first met my lawyer,
16 Graham Hollis in mid-2011. Over the past three years since the investigation into this case first started,
17 I have been committed to helping my lawyers in any way possible and have made myself available to
18 my lawyers and easily accessible to help with whatever needs to be done in the case.

19 8. I knew that I was taking a very big risk by filing this lawsuit against my current employer
20 because I knew that it might mean that I would end up losing my job at PetSmart and that filing this
21 lawsuit might affect my ability to find another job as a Pet Stylist in the future. I also knew that if we
22 didn't win that I might have to pay for PetSmart's attorney's fees. Although I knew all of these risks, I
23 was willing to do so because I thought it was worth it if some positive changes came out of it. I am
24 committed to making sure this lawsuit ends with a good result for all of the PetSmart employees.

25 9. As explained in my prior declaration in support of Plaintiffs' Motion for Preliminary
26 Approval, I have spent a great deal of time, more than 65 hours, helping my lawyers in this lawsuit. I
27 think my efforts and all of the time I have invested in this case as well as the fact that I risked my current
28 employment for the sake of this lawsuit justify my request for a service award in the amount of \$10,000.

1 I understand that the amount awarded to me as a service award is up to the Court and is not in lieu of
2 any amount I may ultimately get for my individual claims against PetSmart.

3 10. I respectfully request the Court grant preliminary approval of the settlement, appoint
4 Class Counsel, appoint myself and the other three plaintiffs as Class Representatives, and do everything
5 else that needs to be done to finalize this settlement. I am committed to this case and will continue to
6 make myself available as needed throughout the settlement process.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9 Executed this 21th day of March, 2014, at Oakland, California.

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13 Alanna Harrison

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